THE FRAMEWORK OF A LASTING PEACE

EDITED BY

LEONARD S. WOOLF

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INTERNATIONAL GOVERNMENT

By L. S. WOOLF

TOWARDS INTERNATIONAL GOVERNMENT

By J. A. HOBSON

THE CHOICE BEFORE US

By G. LOWES DICKINSON

THE FUTURE OF CONSTANTINOPLE

By L. S. WOOLF

PERPETUAL PEACE

By I. KANT

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INTRODUCTION [1]

By L. S. Woolf

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SECTION I

INTRODUCTORY

"WHAT a piece of work is man! how noble in reason! how infinite in faculty!" If publicists, politicians and plain men, when acting or thinking politically, would only keep these words of Hamlet in mind and heart, the world would be saved from much political folly and many political catastrophes. Upon man, whether solitary or in masses, there act reason and an infinite number of "faculties" such as desires, impulses, dreams, ideals, lusts and passions. Great political problems, therefore, such as that of maintaining war in the world or of waging peace, are not simple: they are as complicated as man himself, and can only be fully answered by an equally complicated explanation and solution. But, like all human problems, that of war and peace can only be studied and thought about piece-meal and in compartments, and there is no danger in doing this provided that we cling like limpets to the fact that each piece is a piece and not the whole meal, that each compartment is a single compartment and not the whole train.

The piece or compartment which we shall here be dealing with is the creation or development of political inter-State institutions for maintaining peace and preventing war. To gain admittance you must go to a booking-

office grimly labelled Logic and Reason, and take a first-class ticket, for here we shall be dealing with men as pre-eminently noble in reason, and our only means of locomotion are logic and reason. But the very fact that we are isolating part of a complicated problem may lead us away down one of two side-tracks, each of which is equally false. Upon one of these side-tracks you will find congregated a certain number of people who believe in panaceas, who, by concentrating upon a fragment of the problem, slip into the error of seeing the whole contained in the part. War will never be slain by reason or political institutions and organs alone, by arbitration or arbitration courts, by conciliation or counsels of conciliation, by Holy Alliances or Leagues to Enforce Peace. But the crowds who throng the other side-track, who, because they see this, leap to the opposite conclusion that reason and political institutions can do nothing to prevent war, are equally wrong. It may be true that war will exist so long as the will to war exists, and that there can be no peace without the will to peace, but the absence or presence of international organization, such as councils and tribunals, is *part* cause of the existence of the will to war or the will to peace. At the present moment a minor political institution, materialized in the form of the village policeman, can be seen from my window crossing the path that skirts the paddock. The influence of that rather bucolic and slow-witted political organ—red-faced Mr. Funnell himself hardly realizes that he is, like the Privy Council, a political organ—has very little influence upon my actions and impulses or those of my neighbours ; yet there can be no doubt that if Mr. Funnell did not exist, or if his functions were different, and still more if the political organization to which he is attached did not exist or were different, the

life of this village, even our desires and impulses, would be profoundly modified. Nobody is thought to be absurd if he suggests modification in the political institutions of a village or State, giving reasons for believing that the result will react upon the lives of the inhabitants. There is no ground for denying to international political organization the same kind of power and function.

The ground which we propose to survey—namely, international political organization for preventing war—has already been broken up by the ploughing of many competent thinkers and groups of thinkers. We do not propose merely to drive another furrow through the field. The ground is ready for the seed, but that very fact baffles and puzzles many plain men who would like to take a hand in the sowing. It is so broken up that at first sight we can only see a mass of clods of all shapes and sizes, innumerable dull and conflicting details, such as tribunals, conferences, councils, arbitration, mediation, conciliation, etc. Every one has some "scheme," or "plan," or "league," and all seem to differ profoundly, so that the plain man is inclined either to lose himself in bewildering details, or to turn away in despair with the remark that "Where doctors disagree ——!" We propose, therefore, to insist upon the samenesses rather than the differences in these schemes, to show, if possible, that the different ploughs, guided unconsciously, often by man "noble in reason," have followed two or three broad, general furrows, and that in those furrows the seed of peace must, if ever, be sown.

We propose, in fact, to take some half-dozen of the "schemes" of responsible thinkers and groups, namely: I. League to Enforce Peace, II. Minimum Programme of the Central Organization for a Durable Peace, III. The League of Nations Society, IV. Proposals of Lord Bryce's Group, V. The Fabian Society Draft Treaty, VI. The Com-

munity of Nations, VII. Preliminary Draft of a General Treaty for the Pacific Settlement of International Disputes, by a Dutch Committee—broadly to envisage their proposals materialized in and applied to the world of international facts, and so, if possible, to trace the logic of actual facts which have led to a substantial amount of agreement in the proposals of men widely scattered over the troubled earth.

Adequately to do this it is necessary to begin almost *ab ovo*, and the egg is invariably a cluster of truisms. The problem of war and peace is a problem of the relations of human groups. If there were not relations between the groups called States or nations, the question of war would never arise. Practically, the only human group with which the British Empire has not had to wage or at least to fear a war, is the inhabitants of Mars, and the reason is that, perhaps fortunately, we are divided from them by so effective a natural buffer State that we cannot get into any kind of relationship at all with them. But if ever we did get into any kind of relations with the group in Mars, from that moment, we know, Mr. Maxse and many others would welcome the Martians with open arms into the "Comity of Nations" as potentially our foes and enemies; Martian armaments would be manipulated delicately in first one and then the other scale of the Balance of Power; and in a year or two we might suddenly be awakened (by the daily papers) to the fact that the Martians had always been our "hereditary foe."

In this we see man, noble in reason, at work. For war is one method of regulating relations between human groups. Wherever you have individuals or groups of individuals in relationships with one another, whether those relations are social or sexual, or spatial or financial or commercial, occasions will arise when some method of regulating them becomes necessary, and when the necessity

is consciously realized by the groups. The necessity is actually realized usually through the appearance of disputes and disagreements. A disagreement or dispute is the result of contradictory desires or wills as regards relations between individuals or groups. Thus two men may each desire exclusive sexual relations with a single woman; two men may each desire exclusive possession of a single material object; or two national groups may each desire exclusive control of a single portion of the material earth.

Force or Government?

Now, if you look at the world of human beings as a whole, and as far back from to-day as the mists of history allow, you will see that so far we have only discovered two methods of regulating the relations of individuals and groups. One is by force: a dispute or disagreement due to contradictory wills of two or more individuals or groups, arising whether in the sphere of sexual relations or in that of international polity, may be subjected to the arbitrament of force. Primitive man fought for the exclusive possession of a female just as stags do to-day, and just as nations to-day fight to "impose their wills" upon one another. For the clash of wills can be temporarily resolved by victory and defeat of naked force. But there is another method discovered by man, noble in reason, and widely applied by him to his relationships. This method may be defined broadly as government and organization, which is conscious government. It consists in the regulation of relations according to general rules, which to a greater or less extent are understood vaguely to embody the idea in the community of what the *right* relations ought to be. All customs, from customs of polite society to those of trade; morality; the rules and regulations of all voluntary associa-

tions, from clubs and churches to trade unions; and, finally, laws; are all examples of government in this broad sense —i.e. they have this characteristic, that they are general rules, the object of which is to regulate the relations of human beings or groups of human beings. We spend a considerable part of our childhood in being taught these general rules—for example, the rule as to taking off your hat, if you are a male, on entering certain kinds of buildings, or the rule as to what kinds of material objects you may or may not appropriate to your own use. These rules differ only in three important ways: they regulate different kinds of relations, they are made or formulated in different ways, they are enforced by different means. But though they may differ in any of these three ways, they are all alike in this—that they are examples of man's only alternative to the regulation of his relations by force, and that alternative is the regulation by general rules embodying the general conception of what is right, and the application of such rules to particular cases—i.e. government.

Any rational understanding of the corner of international relations which is here isolated for investigation is impossible unless we continually keep before our minds the fact that regulation of relations according to general rules is an immensely widespread phenomenon, and man's only alternative to regulation by force. Courtship and marriage among primitive men were regulated largely by force; to-day in this country courtship is regulated by custom or general social rules, and marriage both by such rules and by the general rules of law. Again, whenever a person says: "The man is no gentleman; he did so and so," he implies the consciousness that social relations are regulated by general rules. Every merchant, banker, and business man is daily conscious of dozens of general rules, which are not laws, but without

which trade would be impossible, and he daily consciously applies and conforms to them in his business relations. The men who open the gates between the cars on the Tube in London very soon learnt that travelling on the electric railway would become impossible unless they established a general rule that those on the platform must wait to enter the train until all those alighting have left it; and upstairs at the ticket office passengers themselves have been compelled to regulate their relations by two well-recognized general rules: "First come, first served," and "Wait your turn." And the whole body of law consists of precisely similar rules, except that they are made and enforced in a particular way.

International Government.

And in international relations, which are the relations of specific human groups, the same phenomena are observable. The alternative to regulation by force is regulation by general rules. This latter form of regulation is already highly developed. Every day every Foreign Office of the world is recognizing and applying such rules. Hundreds of thousands of Britons have in the last two years met death in defence of them. You may call them International Law, or you may refuse them that dignified name, but you cannot alter the fact of their existence and influence, or the fact that if they were not unconsciously and consciously recognized daily and applied daily, nine-tenths of international intercourse and nine-tenths of international commerce would instantly become impossible.

The foundation of every scheme of international government to prevent war is a recognition of these facts. The framers of these schemes recognize the fact that the only

alternative to war is some kind of regulation of international relations in accordance with general rules. They are constructing the skeleton of future peace, just as the War Minister, when he asks for so many army corps and so many big guns, is constructing the skeleton of future war. The former are laying down the minimum conditions under which a system of pacifically regulating international relations in accordance with general rules can work; the latter is laying down the minimum conditions under which the regulation of international relations by war can work. The former says: "If you wish for peace, prepare the conditions of peace"; the latter: "If you wish for war, prepare the conditions of war"; and both are right.

The problem of all government can be reduced to a problem of establishing general rules, generally accepted, and applicable to all the relations between the related individuals or groups. Hence it must always consist of two distinct parts—first, the establishment of general rules; and, secondly, the application of them to particular cases. This is as true of international government as it is of any other government, and the fact accounts both for the samenesses and for the differences in the various schemes for preventing war. For in so far as the framers of those schemes agree in providing for one or both parts of the problem, there is substantial agreement in their conclusions; but where one scheme concentrates its attention on providing a solution for the first part and neglects the second, while another concentrates upon the second and neglects the first, there is immediately an obvious superficial divergence in the conclusions. We propose now to show this by coming to grips with details.

SECTION II

JUSTICIABLE DISPUTES

IF you examine all the schemes propounded you will find that in one point at least they all agree: they all, without exception, provide for the submission of at least certain kinds of disputes, disagreements, or questions to a judicial tribunal. It will be useful to quote the words in which the schemes make this provision.

The League to Enforce Peace provides that:

All justiciable questions arising between the signatory Powers, not settled by negotiation, shall, subject to the limitations of treaties, be submitted to a judicial tribunal for hearing and judgment, both upon the merits and upon any issue as to its jurisdiction of the question.

Minimum Programme of the Central Organization for a Durable Peace.

The States shall agree to submit all their disputes to peaceful settlement. For this purpose there shall be created, in addition to the existent Hague Court of Arbitration, a permanent Court of International Justice. . . .

The League of Nations Society.

All disputes arising out of questions of International Law or the Interpretation of Treaties shall be referred to the Hague Court of Arbitration, or some other Judicial Tribunal, whose decisions shall be final, and shall be carried into effect by the parties concerned.

Proposals of Lord Bryce's Group.

ARTICLE 2.—The signatory Powers to agree to refer to the Court of Arbitral Justice proposed at the second Hague Conference, or to the existing Permanent Court of Arbitration at The Hague, or to some other arbitral tribunal, all disputes between them (including those affecting honour and vital interests) which are of a justiciable character and which the Powers concerned have failed to settle by diplomatic methods.

ARTICLE 4.—"Disputes of a justiciable character" to be defined as "Disputes as to the interpretation of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the nature and extent of the reparation to be made for any such breach."

The Fabian Society.

ARTICLE 13.—The International High Court shall deal only with justiciable questions, as defined in these Articles, at issue between the national Governments of independent Sovereign States. . . .

ARTICLE 16.—The Constituent States severally undertake and agree to submit to the International High Court for trial and judgment every question, difference or dispute coming within the definition of a justiciable question as

laid down in these Articles that may arise between themselves and any other independent Sovereign State or States.

The Community of Nations Pamphlet.

For this purpose (international co-operation) it is necessary to supplement the existing international machinery in various ways, and in particular by constituting and establishing on a definite basis the following bodies :

(*a*) . . .

(*b*) Courts of Arbitration and Justice to which points of difference concerning the interpretation of treaties and other matters of a juridical character in dispute between nations can be referred for decision.

Draft Treaty of the Dutch Committee.

In order to ensure the maintenance of Peace, the Contracting States undertake to submit all their differences to the decision of the International Court of Arbitration, or . . .

The universality and striking similarity in these proposals go at once to the roots of the problem which we are studying. The alternative to force is government: government is the regulation of relations according to general rules. A necessary condition for the regulation of international relations otherwise than by war is a system for applying in particular cases those rules which do exist for the regulation of the relations. All the authors of these clauses are paying homage, consciously or unconsciously, to the inexorable logic of reason and facts, whether in Holland, Britain, or the New World ; hence

the Dutchman agrees with the Briton and the Briton with the American. The foundations of this agreement can be reduced to two propositions: (1) Where general rules as to international relations have been established by consent, nations are bound to regulate their relations in accordance with those rules; (2) in practice this is not possible unless provision is made whereby all disputes, the subject matter of which is covered by existing rules or which is concerned with the interpretation of such rules, shall be submitted for settlement to a regular international judicial tribunal.

Upon this some few additional remarks are necessary. The authors of these clauses are concentrating their attention only upon the *application* of *existing* rules to relations and disputes covered by those rules. That is the meaning and the reason for the use of such words as "justiciable questions," "questions of International Law or the Interpretation of Treaties," etc. The definition of "justiciable" may vary in the different schemes, but the variation is purely formal: the intention of the author always is that a "justiciable question" shall include every international question covered by an existing general rule. Hence the inclusion of all questions covered by treaties, not because they are covered by treaties, but because they are covered by the general and fundamental rule of international law that a nation is bound to conform with its treaty obligations. The actual definitions vary only because their authors have attempted in different ways to make this intention explicit.

The application of an existing general rule to a particular case or disagreement is the foundation of all law and judicial proceedings. The reason, and the only reason, why the judge and the court have been so widely adopted by human beings as a rational method of government, is that the sphere of the judge or court is strictly limited to

the application of established general rules, which at least in theory embody "the right." If nations ought to regulate their relations in accordance with the existing rules of international law and in accordance with treaties which they themselves have signed, and if it be possible to set up a tribunal which will impartially apply established rules and treaties to particular disputes covered by the rules or treaties, then a refusal by a nation to bind itself to submit all such disputes to the decision of an international tribunal is tantamount to a declaration that it proposes to regulate its relations not by right and law, but by the pure frightfulness of force. We know, if we take the trouble to examine the international history of the last hundred years, that the constitution of such an impartial tribunal with this limited jurisdiction is possible. It follows that the refusal or acceptance of this first instalment of international government is the test of whether a nation's ideal in its international relations is to be a corporation of wild beasts or of civilized men.

Are there any International Laws?

There is a final and fundamental objection to this proposal, which we often hear raised to-day, and which can be briefly answered. General rules, in the form of international law or any other form, we are told, do not exist, and it is fantastic therefore to expect nations to submit their vital interests to a court which is supposed to administer non-existent laws. It is this statement itself which is a fantastic delusion. It is true that international law does not cover the whole field of international relations, but neither does municipal law cover the whole field of individual relations; it is true that much of international law is vague and unsatisfactory, but so is a great deal of

municipal law vague and unsatisfactory, and it is precisely in the courts, where it has to be applied to particular cases, that much of its vagueness and unsatisfactoriness is daily taken out of it. There is, in fact, a vast body of well-established international law covering a great extent of international relations, and certainly the fundamental relations upon which international society rests to-day. People who deny this often do not see that they are denying a large part of the case for our intervention in this war. For if there are no well-established rules of international law, what is our quarrel with Germany? If we did not enter this war to uphold the obligation of international treaties and the obligation to abide by certain clearly defined rules of right and wrong embodied in established international law, then thousands upon thousands of Englishmen have been lured by the false statements of our statesmen, our politicians and our Press to sacrifice their lives for a fiction and a delusion.

Take the case of the violation of the neutrality and territory of Belgium by Germany. If we continually lay stress upon the hideous illegality of Germany's action, how can we deny that there are established rules of international law regulating the relations of States? But every one really knows that the rules or laws exist, and that they *were* broken by Germany; that it is a fundamental rule of international law and of any system of regulating international relations according to right and not force that States are bound to comply with their treaty obligations and to respect the independence and territorial integrity of small and great States. If the question between Germany and Belgium were now or had been remitted to the Hague tribunal or to any other international judicial tribunal, no matter when or where constituted, it is absolutely certain that that tribunal would unanimously decide that

Germany had broken those two general rules of international law. Or, take again the far more difficult and, from a legal point of view, uncertain case of Austria and Serbia. Even here there are well-established rules of international law defining the responsibility of States for the actions of their citizens who are planning or taking hostile measures against the peace or integrity of a neighbouring State. If Austria and Serbia had really been anxious that their relations as to Bosnia, as to the Narodna Odbrana, even as to the murder at Serajevo, should be regulated in accordance with law and right, there is absolutely no doubt that a properly constituted international tribunal would have been able to administer, and actually would have administered, substantial justice without going outside the orbit of those existing international laws.

The people who deny the existence of international law, and therefore of the possibility of pacifically settling by judicial decision all disputes—and only those disputes—actually covered by the existing law, are in fact the people who do not wish the relations of States to be regulated in accordance with right and law. So long as the world agrees with them, or so long as it accepts their leadership or authority, so long will international law and right be impotent, and men be lured to destruction in defence of right by the very men who deny the existence of right. That, however, is no reflection upon the wisdom and insight of the framers of the schemes printed in this volume, who have correctly seen and correctly defined the conditions that are necessary for the regulation of international relations in accordance with right if ever the world shall rebel against the authority and leadership of such men, and shall determine that the relations of States *must* be regulated in accordance with law and right.

What "Justiciable" Means.

Before finally leaving this question of a judicial tribunal, it is necessary to notice one other point which has already been touched upon. The schemes differ to some extent in their definitions of "justiciable" disputes—i.e. those disputes which it is reasonable to ask nations to submit to the decision of a judicial body. The definitions fall into two well-marked classes. The first seeks to make "justiciable" include all those disputes the subject matter of which is covered by existing rules of international law or by treaty obligations. Of these perhaps the simplest is that of The League of Nations Society :

"All disputes arising out of questions of international law or the interpretation of treaties."

The logical foundation of this class of definitions has been sufficiently explained in the preceding paragraphs, but there is a second class, an understanding of which will lead us naturally to a further important compartment in the problem of international government. The Draft Treaty of the Dutch Committee starts off by defining justiciable disputes in the ordinary way as "all disputes concerning the interpretation of treaties and principles of international law," etc. But by a very ingenious, original, and interesting suggestion, which it would take too long to explain in detail, the Commission subsequently narrows down its definition in such a way that a justiciable question which a State is bound to submit to the decision of a judicial tribunal is really defined as one which belongs to any class of questions which a nation has actually bound itself by treaty to submit to judicial decision. In effect this is equivalent to holding that the regulation of international relations through a judicial system in accordance with existing rules of international law should be confined

to questions which a State has bound itself by treaty expressly to submit to judicial decision.

This suggestion of the Dutch Commission is due, we believe, principally to a distrust of and uneasiness about international law, and to a deeply rooted feeling that any kind of international government must be based in a more than ordinary measure upon consent. Here we touch the second great department of the problem of international government. The essence of all government is, we repeat, the regulation of relations in accordance with general rules. Hence there are two different necessary conditions of government: (1) the existence or establishment of the general rules, and (2) their application to particular cases. So far we have been concerned only with proposals based on the necessity of providing for some means of applying the rules which exist to particular cases of dispute, now we are faced with a different question—namely, the establishment of the rules themselves.

SECTION III

NON-JUSTICIABLE DISPUTES

WE have already had to deal with the question of the existence and status of international law, and we have said many complimentary things about it; we shall now have to look into its status a little more closely, and we shall be forced to say some rather uncomplimentary things about it There is nothing contradictory in that, nothing more contradictory than in the statement, unfortunately so often true, that Miss X has a very pretty face but plays the piano abominably. Metaphorically, indeed, we may say that international law has a very pretty face, but it plays the international piano abominably. The existing general rules of international law have been established principally by custom; some of them can be deduced or inferred from treaties; some of them have been declared to be international law by the responsible representatives of a large number of States at international conferences; a few have been made deliberately and consciously by practically all the civilized States of the world at conferences called for the express purpose of international legislation, and in such cases they have been embodied in treaties. It will be seen at once that there is no regular organ for international legislation, no organ which can decide what the general rules ought to be

or define and determine what the existing general rules are.

It is by no means necessary for the existence of government in our sense, namely, the regulation of relations in accordance with general rules, that those rules should be consciously defined, determined, or "made," or that there should be some specific organ for establishing them. A large number of human relations are in almost every sphere of life regulated by rules which have never been "made" in this sense. Thus many, possibly most, of the general rules applied as law in English courts have never been "made" or defined by any legislative organ ; they are customary general rules of exactly the same kind as many of the rules of international law. But a system under which the genesis of the rules is unconscious and there is no conscious provision of machinery for determining or altering the rules is only suitable for a simple society in which the relations are few and comparatively unchanging. Again, the more conscious individuals or groups are of their relations, the more necessary does it become to have some method for determining consciously what are the general rules which are to regulate these relations. International relations exist between specific groups of individuals, who are at times extremely conscious of the relations both between the individuals of their own group (patriotism) and between the different groups of individuals (nationalism). Under these circumstances it is inevitable that much of international law is unsatisfactory, because it is vague and undefined and because there is no regular method available of defining and determining it. Moreover, like all systems of rules and law, it only covers a part of the field of relations, and there are wide and important spheres of international relationship for which there are no general rules at all.

Disputes not Covered by Law.

It follows from this that in our present imperfect state of civilization and development only a part of international relations are covered by existing rules, that many of the existing rules are ill-defined and uncertain, and therefore that it is neither possible nor reasonable for all international disputes or questions to be submitted to judicial tribunals for decision in accordance with existing general rules.

War results from international disputes. We have seen how agreement is practically universal that no rational or civilized international system is possible unless it provides for disputes covered by existing rules to be submitted to a particular kind of settlement, a judicial decision. But now what about disputes which are not covered by existing rules? Here clearly there are two different lines which you may take: you may either try to extend the scope and improve the rules or international law so that more disputes when they arise will be suitable for judicial settlement, or you may concentrate your attention upon providing methods for settling disputes not covered by international law. All the authors of these schemes recognize the necessity of the second alternative, but not all of them recognize the immense importance of the first; we shall, therefore, first consider the second alternative.

The problem may be stated thus. Suppose it be admitted that where international relations have been defined by treaties or by international law, disputes as to *those* relations should be submitted to judicial decision, is there any system which it is reasonable and fair to ask States to adhere to for settling other disputes as to relations not defined by treaties and international law? And it is

necessary, before going on to examine the solutions offered, to point out one fact of some importance. A false distinction between these two kinds of disputes is often drawn (even by some of the authors of these schemes) which indicates a fundamentally wrong view of international relations. The first kind of dispute is distinguished as legal, and the second as political. Now, if legal merely means "covered by treaty obligations or international law," and political means merely "not covered by treaty obligations or international law," we have nothing to say against the use of the words. But very often writers who begin to use the words in this sense slip into using them in another sense. They mean by "legal" disputes questions of a technical and unimportant nature connected with the minutiæ of international law or the interpretation of treaties, and they mean by "political" questions disputes over vital interests of national policy. But *this* definition is not only a false distinction, it strikes at the roots of any pacific system of international society. It denies the possibility of regulating international relations in accordance with general rules of right. The basis of a rational system of international society, we have had to repeat *ad nauseam* of the reader, is that States in their relations are bound to respect treaty obligations and the existing rules of international law. But treaty obligations and rules of law are no respecters either of persons or policies. A political question in this sense becomes a legal question as soon as it is covered either by an existing treaty or by existing international law. And it is pure moonshine to pretend that treaties and international law do not cover the most vital questions of national policy. The question of the neutrality of Belgium was a vital political question, but it was fully covered both by treaty and international law. The responsibility of the

Serbian Government for alleged hostile acts of its nationals, or of other persons living in Serbian territory, against the Austrian Government and the integrity of the Austrian-Hungarian Empire was a legal question covered by international law; it was also an acute political question. On the other hand, the question of the Bagdad Railway was a political question which was not a legal question, and could not therefore have been made amenable to judicial decision, because the content of the dispute was not covered by any treaty or any rules of international law. Similarly, the dispute between Russia and Austria in the Balkans, which paved the way to the war, was a political question to which no existing general rules of international law applied. Yet both of these questions would have been "legal," as well as "political," if there had been, say, a Russian-Austrian treaty defining the relations of the two States towards Serbia, and if there had been a general treaty defining the commercial and other relations of European States in the territories of the Ottoman Empire in the same way as their relations have been defined in some other parts of the world, e.g. Africa.

Arbitration or Conciliation?

The older pacifists of the nineteenth century are often laughed at, even by their spiritual descendants of the twentieth century, for their belief in arbitration and judicial settlement. The belief was exaggerated and they did not see the true sphere of the international court. But their instinct to seize upon arbitration was sound: they had vaguely grasped the fundamental principle upon which alone a civilized international society can be based—a regulation of relations in accordance with general rules, and the application of the general rules in particular

cases of dispute by an independent judicial body. And the rule must be applied in all cases where it exists, whether political or not political.

But we are still left with questions of relations to which no existing treaty or rule of international law applies. And so long as international law remains as vague and fragmentary as it is to-day, many disputes of this nature will always arise. How are they to be settled? Now, there are two methods in which a sane and sober man might reasonably try to settle a dispute of this kind. Remember always that this kind of dispute is specifically different from one which would be remitted to a judicial tribunal. It is not covered by any general rule of law or right and wrong: therefore to decide it rightly, you would to all intents and purposes have first to make your general rule yourself, a very difficult thing for the most unprejudiced of human beings to do in an unprejudiced manner. In a question of this sort, therefore, both sides will almost certainly be both a good deal right and a good deal wrong. One way, then, to proceed, is not to attempt to *decide* the dispute on general considerations of right and wrong, but to try to get a solution by compromise which will at least be accepted by both parties. This method of attempting to settle international disputes has for a very long time had a recognized place in diplomacy under the name of good offices and mediation, and perhaps conciliation. All the authors of these schemes propose only to extend, develop, and regularize this existing method through some international body whose object shall be conciliation. But there is another method which is essentially different from this. You may hand the question over to some independent body whose object is not to find a solution which will be accepted by both sides, not, in fact, to conciliate both sides, but as a

body of reasonable and unprejudiced people to say what appears to be a just and fair decision of the question. This method is also not the mere vapouring of peace cranks: it has already found a place in the actual machinery of diplomacy and foreign policy. The Hague Convention for the Pacific Settlement of international disputes provided for the constitution of International Commissions of Inquiry, impartial bodies to which States might submit disputes, not settled by diplomacy, for investigation of facts and for a report. It was to a commission of this kind that the Dogger Bank incident between Great Britain and Russia, a crisis of the most acute and dangerous nature, was submitted, and the report of the commission was accepted as a settlement by both Powers. But the Peace treaties which the United States concluded in 1914 and 1915, with fifteen other States, have developed this system of commissions considerably. These treaties differ in minor points, but the general result of them is as follows. They provide for the constitution of permanent international commissions, and the signatory Powers bind themselves to refer all disputes, not settled by the ordinary methods, for investigation and report to the Commission. The signatory States "agree not to declare war, or begin hostilities during the investigation, and before the report is submitted," though they reserve "the right to act independently on the subject matter of the dispute after the report of the Commission shall have been submitted."

It is most important to recognize that there is here a real distinction between the methods of attempting to find a settlement of dispute because, as we shall subsequently see, the difference may have important effects upon the right way to constitute the organ to which the settlement is entrusted. The first method aims at conciliation, at

finding a compromise which will be sufficiently satisfactory to be accepted by both parties, at extending and developing in fact the diplomatic machinery of mediation. The second aims at obtaining an impartial investigation of the subject of the dispute and an unbiased opinion of five or more honest men upon the subject matter of the dispute, in the hopes that the disputing parties will accept that opinion as a settlement or the basis of a settlement. Now let us turn to the schemes and see how these ideas and principles materialize there.

The League to Enforce Peace.

All other (i.e. non-justifiable) questions arising between the signatories and not settled by negotiation, shall be submitted to a council of conciliation for hearing, consideration, and recommendation.

Minimum Programme of the Central Organization for a Durable Peace.

The States shall agree to submit all their disputes to peaceful settlement. For this purpose there shall be created, in addition to the existent Hague Court of Arbitration, (*a*) a permanent Court of international justice, (*b*) a permanent international Council of investigation and conciliation. The States shall bind themselves to take concerted action, diplomatic, economic, or military, in case any State should resort to military measures instead of submitting the dispute to judicial decision or to the mediation of the Council of investigation and conciliation.

Proposals of Lord Bryce's Group.

The signatory Powers to agree that every party to a dispute, not of a justiciable character, the existence of which might ultimately endanger friendly relations with

another signatory Power or Powers, and which has not been settled by diplomatic methods, will submit its case to the Council (i.e. the permanent Council of Conciliation) with a view to conciliation.

Unless through the good offices of the Council or otherwise, the dispute shall have been previously settled between the parties, the Council to make and publish, with regard to every dispute considered by it, a report or reports containing recommendations for the amicable settlement of the dispute.

The League of Nations Society.

All other disputes (i.e. not arising out of international law or the interpretation of treaties) shall be referred to and investigated and reported upon by a Council of inquiry and conciliation; the Council to be representative of the States which form the League.

Draft Treaty of the Dutch Committee.

ART. 98.—The Council has jurisdiction to take cognizance of disputes between States:—

1. On the request of all the parties.
2. On the request of one of the parties, if the International Court of Arbitration has declared the case to be outside its jurisdiction; if, according to the opinion of the parties, the dispute is not one subject to Arbitration; or, if it does not admit of doubt that the case is outside the jurisdiction of the Court of Arbitration.

ART. 105.—Decisions are taken by the majority of votes.

The Fabian Society.

When any question, difference or dispute arising between two or more constituent States is not justiciable as defined

in these Articles, and is not promptly brought to an amicable settlement . . . it shall be the duty of each party to the matter at issue . . . to submit the question, difference or dispute to the International Council with a view to a satisfactory settlement being arrived at. . . . The International Council may appoint a permanent Board of Conciliators for dealing with all such questions, differences or disputes as they arise, and may constitute the Board either on the nomination of the several constituent States or otherwise. . . . When any question, difference or dispute, not of a justiciable character . . . is submitted to or taken into consideration by the International Council as aforesaid, the Council shall . . . take action, either (1) by referring the matter at issue to the permanent Board of Conciliators, or (2) by appointing a special committee . . . to enquire into the matter and report, or (3) by appointing a Commission of enquiry to investigate the matter and report, or (4) by itself taking the matter into consideration.

The Community of Nations Pamphlet.

A Council of conciliation to which cases of divergent interest between nations not of a juridical character can be referred for consideration and recommendation.

It will be seen that all these schemes recognize the necessity of providing that all non-justiciable questions and disputes shall be referred to a non-judicial body; but they do not all clearly distinguish between the two alternative and possible bases of this body's action. All of them do not make it clear whether this Council shall proceed by way of mediation, conciliation, and compromise, or whether it shall aim at impartial investigation and an

impartial report as to the fair settlement of the dispute. The League to Enforce Peace and the League of Nations Society are not explicit, though the fact that each calls its body a Council of Conciliation would point to its function being one of mediation. On the other hand, the fact that the function is defined by the League to Enforce Peace as "hearing, consideration and recommendation," and by the League of Nations Society as "investigation and report," seems to point to its function being one of impartial inquiry and report. The Minimum-Programme clearly contemplates only a body which shall proceed by way of mediation and conciliation, for it describes the function of the Council as solely that of mediation. The Dutch Committee's Council is to investigate and give a decision which is binding upon the parties, although provision is made whereby in certain cases it can merely "give an opinion." The proposals of Lord Bryce's group recognize the distinction between the two functions, for they seem to contemplate that their Council shall, first by its good offices, seek to mediate between the two parties, and that then if the mediation is unsuccessful it shall proceed to make an investigation, report and recommendation for settlement. Lastly, the Fabian Society makes the clearest distinction and provision for the two different functions. It provides for the appointment by the Council of a permanent Board of Conciliators. The Council would have the power of handing the dispute over to this Board, which would try to settle it by mediation and conciliation: if this failed, the whole question could then be referred to a quite distinct body, either a committee or commission of inquiry, or to the Council itself for impartial investigation and report.

An Analogy from Industrial Disputes.

This distinction is not mere hair-splitting and logic-chopping: it represents a really important difference in method of filling a gap in government between two groups of individuals acknowledging no common superior authority. The problem of international government is not an isolated one, and exactly the same questions and difficulties which we have been examining occur in other fields of human relationship. For instance, this question of the two methods of settling disputes between two "independent" groups continually arises in the relations of Labour and Capital. Many labour disputes are disputes between two groups of individuals in the position of "sovereign independent" States, because the particular dispute is covered by no general rule or law. In ordinary times there is no law binding a trade union, the group of wage earners, to work for a certain wage, and no law binding a group of employers to pay a certain wage. Therefore, in a dispute over wages these two groups are in the position of the groups called sovereign independent States to one another in a non-justiciable dispute. And the two methods of attempting to obtain a settlement which we have been insisting on are continually being used in labour questions: the point to notice is that by labour and capital they are recognized as essentially different and are kept distinct. When a strike occurs and Sir George Askwith goes down and attempts to arrange a settlement, he proceeds by way of conciliation and mediation; he tries, we may be sure, to find by way of compromise a solution which will be accepted by both sides: if a settlement suggested by him is refused, he promptly suggests another. But very often in labour disputes an entirely different method is tried: the whole

question is referred to an independent and impartial person or body which investigates and recommends a fair settlement. But Sir George Askwith does not arbitrate in a strike, and an industrial arbitrator does not mediate or conciliate; the two processes are different, are recognized as requiring different bodies, and are kept distinct.

The Dogger Bank.

So, too, in international affairs it is at least doubtful whether a body which would be suitable for mediation and conciliation would at the same time be the best for undertaking an impartial inquiry and making an impartial report. For instance, the International Commission of Inquiry which settled the Dogger Bank incident was admirably adapted for arriving, after an investigation, at a correct decision as to the facts of the attack upon the British fishing boats by the Russian fleet, and also for making a report and recommendation which the world generally would recognize as impartial. That is the object of this kind of investigation—to obtain, after an interval long enough to allow passions to cool, an opinion upon the merits of the dispute which the world will recognize as impartial and which, therefore, the cooled disputants will find it difficult to refuse. But though a Commission formed of expert admirals was admirably adapted for this purpose, it would obviously have been quite unsuited to proceed by way of mediation or conciliation. And imagine the impossible position of the poor admirals if they had first tried to bring the two parties together by way of mediation and compromise, and then had suddenly had to change their method and make an impartial investigation and report upon the incident. Further, it should be observed that this Dogger Bank

incident was clearly one which almost certainly could not have been settled by mediation and conciliation alone. No one could have by mediation suggested a solution which both Russia and Great Britain would have accepted; and it is absolutely certain that if, when France offered her good services, she had gone on by way of mediation to suggest as a settlement the terms eventually recommended by the International Commission, they would have met with a blank refusal by Russia. Yet when they appeared as the opinion of an impartial commission of inquiry after investigation, Russia accepted them.

The Bagdad Railway.

On the other hand, consider for a moment the question of the Bagdad Railway, a question of international policy of a non-justiciable nature. It belonged to a class of international problems which it is most desirable to settle, and most dangerous to allow to simmer unsettled for years. It was, however, not the kind of question which it is possible to conceive as amenable to settlement by way of an impartial investigation and report. One cannot imagine that any good would have resulted from five of the most impartial men sitting down and making a report "on the facts," and then going on to say: "We think that Germany ought to do so-and-so, and Great Britain ought to do so-and-so." On the other hand, the greatest good in the world might have resulted from the whole question being referred to a small body which would have proceeded by way of mediation and conciliation. As we know, it was eventually settled by compromise, but one cannot doubt that it would have been settled long before it had produced an acerbity in German and British relations if it had been early entrusted to the mediation of a Board of Conciliators,

composed, for instance, of the President of the United States and the Prime Minister of Norway.

Diplomatists or Lawyers?

These two names bring us to the last point connected with this compartment of the problem. The personnel of a Board of Conciliators should in most cases be different from that of a Commission of Inquiry. For settling a question like that of the Bagdad Railway you want a kind of small conference in which Germany and Britain would be represented by their responsible ministers, and the work of conciliation, suggestion, and mediation would be done by the responsible ministers, who would have the weight and authority of representing impartial States disinterested in the particular question, but deeply interested in finding a solution of it. On the other hand, for a Commission of Inquiry you do not require responsible ministers, but only men of weight and distinction and unimpeachable impartiality, who have some international experience and some experience in weighing evidence.

To sum up: if there is to be any kind of pacific regulation of international affairs, some provision must be made, as these schemes agree, for settling non-justiciable disputes between nations. There are two methods which have been developed by diplomatists in the past, and which admit of great development in the future. These two methods are distinct, and while some schemes concentrate their attention upon one, others concentrate their attention upon the other; and some, again, tend to confuse the two methods. Both methods should be given a definite place in any organized system of settling international disputes and of international government.

SECTION IV

AN INTERNATIONAL LEGISLATURE

We now have to turn to another and one of the most difficult parts of the problem—that of making the general rules for the regulation of international intercourse. Probably because of its difficulty, and because of the extremely delicate questions involved in it, it does not find a prominent place in most of these schemes, and in some it is ignored altogether. But it is of immense importance, and we suggest that precisely because it is so difficult and delicate, it must be faced with honesty and boldness by any one who holds that international government and the pacific regulation of international relations are not only desirable but practical.

We propose first, as in previous cases, to indicate how and to what extent the several schemes make provision for establishing, making, or altering the general rules which are to regulate the relations of States; in other words, for the international legislative function.

The League to Enforce Peace.

Conferences between the signatory Powers shall be held from time to time to formulate and codify rules of international law, which, unless some signatory shall signify its dissent within a stated period, shall thereafter govern

in the decisions of the judicial tribunal mentioned in Article 1.

The Minimum Programme of the Central Organization for a Durable Peace.

The work of the Hague Conferences, with a view to the peaceful organization of the Society of Nations, shall be developed. (The Minimum Programme also lays down certain particular new rules of international law which it maintains should be made by the nations.)

The League of Nations Society

Makes no provision at all for dealing with international law or general rules.

Proposals of Lord Bryce's Group.

The Council to be at liberty to make and submit for the consideration of the signatory Powers suggestions as to the limitation or reduction of armaments, or any other proposal which in its opinion would lead to the avoidance of war or the diminution of its evils.

Draft Treaty of the Dutch Committee.

Does not provide for dealing with international law or general rules.

The Fabian Society.

ART. 5.—The International Council shall be a continuously existing deliberative and legislative body composed of the representatives of the constituent States. . . .

ART. 8.—It shall be within the competence of the International Council to codify and declare the Inter-

national Law existing between the several independent Sovereign States of the world; and any such codifying enactment, when and in so far as ratified by the Constituent States, shall be applied and enforced by the International High Court.

It shall be within the competence of the International Council from time to time, by specific enactment, to amend International Law, whether or not this has been codified, and any such enactment, when and so far as ratified by the several Constituent States, shall be applied and enforced by the International High Court.

Whenever any Constituent State notifies its refusal to ratify as a whole any enactment made by the International Council, it shall at the same time notify its ratification of such part or parts of such enactment as it will consent to be bound by: and the International Council shall thereupon re-enact the parts so ratified by all the Constituent States, and declare such enactment to have been so ratified, and such enactment shall thereupon be applied and enforced by the International High Court.

When any such enactment of the International Council making any new general rule of law has been ratified wholly or in part by any two or more Constituent States, but not by all the Constituent States, it shall, so far as ratified, be deemed to be binding on the ratifying State or States, but only in respect of the relations of such State or States with any other ratifying State or States; and it shall be applied and enforced accordingly by the International High Court.

It will be seen that of these six schemes only two, the League to Enforce Peace and the Fabian Society, make any serious attempt to provide for the making or alteration of International Law. The proposals of Lord Bryce's Group

merely provide for the suggestion or initiation of international legislation by the Council;[1] those suggestions might or might not be followed up by the signatory States in any particular case, and it is clear that it would in each case depend upon negotiation whether a conference should be called to consider the suggestion. We know from the past that under such circumstances the process of determining or altering international law is both slow and unsatisfactory. The Minimum-Programme has only a rather vague reference to the development of the work of the Hague Conferences, and the other two schemes ignore the matter completely.

The Dangers of a *Status Quo*.

We have said that the question is of the first importance, and we must now, in face of this rather thin harvest of suggestions, make good this assertion. Perhaps the clearest way of proving it is in connection with an objection often taken against any kind of scheme for the international organization and the pacific regulation of disputes. The objection could not be more clearly stated than in a letter which appeared some little time ago in the *Westminster Gazette* by a writer, Mr. Bisgood, who was arguing against some of the schemes which we have been examining. Mr.

[1] In the introduction to the Proposals, however, the necessity for a regular organ for codifying and developing international law is clearly recognized, and the hope is expressed that such an organ will be found in the Hague Conference (*vide* page 83 below). It should also be remarked that formally the scope of the Council in these Proposals is wider than that of the Conferences of the League to Enforce Peace. The Conference of the League to Enforce Peace is restricted to "formulating and codifying rules of international law"; the Council in Lord Bryce's Proposals is to make suggestions as to "the limitation or reduction of armaments or any other proposal which in its opinion would lead to the avoidance of war or the diminution of its evils."

Bisgood pointed to the Treaty of Vienna and the Holy Alliance and said: "Lo! they failed!" "They failed," he wrote, "because they stereotyped the *status quo*. The world moved on." All leagues of peace, he argues, have failed for the same reason, and any league founded upon a treaty, with tribunals to condemn breaches of treaty and to uphold a fixed international law, must fail because they stereotype the *status quo*, and "the world moves on."

Now, it is worth pointing out that Mr. Bisgood proves too much. His last two sentences are: "Even the Union of the United States failed when the issue became worth fighting for. Hence the Civil War." Here, if the failure of the Treaty of Vienna and the Holy Alliance prove the futility of a league of nations to ensure peace, then the failure of the Union of the United States ought to prove the futility of national government to ensure civil peace. But both statements are equally exaggerated. Nothing will ever make either civil war or international war impossible until a merciful Providence perhaps has frozen the earth into the lifeless condition of the moon, where alone the sanguine philosopher should seek perpetual peace. But that men have started, and will start, killing one another within the same State for some "issue worth fighting for" clearly does not prove that civil government has failed again and again to prevent men killing one another for some issue worth fighting for. It will hardly be maintained that the only issue worth fighting for that has ever arisen in the United States has been the issue of the Civil War: and yet even the Americans normally refrain from shooting their fellow-citizens in large numbers. Similarly, the failure of a league of nations, if it had ever been tried—and, in fact, it has not been tried—would not prove the futility of international government or organization. The alternatives

with which we are faced are not that of making war impossible and complete resignation and despair; the real alternatives are between making war probable, under the existing system, and making it improbable by a league of nations. But war, just like civil war, or small-pox, or political intelligence, remains possible even when you have made it improbable.

But we are still left with the question of the *status quo*: a question intimately connected with that of the making or altering international law. This will appear clearly if we try to imagine concretely the society of States based upon the principles which we have so far traced as universal in the schemes for international society. The foundation of that society would be the regulation of relations in accordance with general rules and laws: and this principle appears in a more developed and concrete form in the provisions that international disputes covered by general rules or laws should always be referred for decision to a judicial body, while disputes not so covered should be referred for conciliation or settlement to another kind of body or bodies. This is a political ideal, and the kernel of that ideal is the application to international relations of the rule of law. Put it into other words and you get Mr. Gladstone's famous sentence, rendered still more famous because Mr. Asquith adopted it as a definition of our object in this war: "The enthronement of the idea of public right as the governing idea of European politics." You can only enthrone the idea of public right by extending and defining the rule of international law, for the throne of public right can only be built out of general rules embodying the conception of what is right. The enthronement of public right is one of those fine phrases which prove that the man who used it or quoted it must be a statesman; but when we

come down from statesmanship to facts, we have to translate this fine sentence into some such ugly words as these: "the defining, determining and developing of the general rules of international law with the object of making as many international disputes as possible, when they do arise, justiciable." For if there is no rule of international law applicable to a dispute when it arises, if the dispute is not justiciable, then it means that so far as the question involved in that dispute is concerned, the world has not yet evolved any public right to be enthroned. Public right is, in fact, very much like a hare: you can neither cook the hare until you have caught it, nor enthrone public right until you have defined it.

Extending the Reign of Law.

The idea which is implicit in the minds of Mr. Gladstone, Mr. Asquith, and the framers of these schemes, is the extension of the field of general rules of international law to cover, if possible, the whole field of international relations. In other words, our aim should be to make every dispute justiciable, so that every dispute arising between States could be, and would be, referred to a judicial tribunal for decision in accordance with a previously established general rule of international law. That is an ideal which will probably never be completely attained, but that does not mean that we should not aim at it. Mr. Gladstone and Mr. Asquith have told us definitely that we should aim at it, the latter adding that it is the main object for which we are fighting this war; President Wilson has told us that we should aim at it, and so has Mr. Lloyd George, and Herr von Bethmann Hollweg, and Mr. Balfour, and Lord Grey, and all the authors of these schemes. But if we are to take

this as our practical political ideal, then we must face the practical consequences involved in the ideal.

The first consequence is this. If we are to aim at extending the field of public right or international law as much as possible, we require some means of defining and determining what the law is. Or looked at from another angle, if we establish a system under which international disputes covered by general rules will be settled by judicial tribunals, there must be clearly defined general rules for the tribunals to apply. In many cases there are such rules, but in an enormous number of most important cases there are none, and very often the rules which do exist are vague and ill-defined. Therefore, from every point of view, it becomes of the highest importance, if the rule of public right is to be applied to international relations, that some means of defining and determining the general rules embodying public right should exist. At the present moment no effective means for performing this function exist.

But this leads us to a second point where we are confronted with the riddle of the *status quo*. If the system of public right or law, or the regulation of relations in accordance with general rules, be applied to international relations, certain consequences inherent in such a system follow. Whenever man applies this system of government to his relations—and he is always extending it to new fields of human relationship—he always and inevitably sets up over the living the tyranny of the dead. It is often forgotten that even in the most democratic country imaginable men would not rule themselves; they would be ruled for the most part by the dead. At any particular moment of time government means the regulation of relations by certain existing general rules. Those rules are fixed, established: they are the framework of society

as it exists: they were made by men, now dead, embodying their ideal of what society should be, and it is through their power that society as it exists is protected from suffering change.

In a certain sense, and to a certain degree, there is justification in Mr. Bisgood's objection to a league of nations which seeks to enthrone the idea of public right in Europe. International law regulates the fundamental relations of States—e.g. the whole of international law is based upon the doctrine of the sovereignty, independence and territorial integrity of States. International law is, therefore, the great bulwark of the international *status quo*, just as municipal law is a powerful bulwark of the social *status quo*. Treaties, again, are another bulwark of the same kind: their whole meaning and intention is to stereotype the *status quo* in so far as they define the constitution of international society or the relations of States. If, then, a league of nations effectually succeeded in imposing upon the world a system which regulated international relations rigidly in accordance with existing international law and existing treaties, and provided no means of altering the laws or making new laws and treaties, then the effect of the league would be to stereotype the *status quo*, and the only method of varying the *status quo* would be to resort to force. And the more fragmentary and ill-defined international law is, the more certainly would any such system lead either to gross injustice or to early and complete failure.

It should be noted that people who, like Mr. Bisgood, take this objection of the *status quo* to any league of nations misinterpret the league's mode of operation. Of the schemes examined by us, if you choose out the one which makes least provision for altering international law and which concentrates the fullest force behind the *status quo*

as embodied in treaties and international law, you will find on reflection that it by no means stereotypes the *status quo* to the extent which Mr. Bisgood foretells. Only where international relations are covered by existing rules of international law or by existing treaties does it act in that way—i.e. by making those laws and treaties binding and by providing no means of varying or amending them. But for all relations not so covered, it provides a method of regulation which would admit fully of progress, change, and the variation of the *status quo*. Any question connected with such relations would be referred to a council of conciliation or a commission of enquiry in which, *ex hypothesi*, the settlement would not depend upon law or treaty obligations. Thus, for instance, if the Bagdad Railway question had been submitted to a council of conciliation, the solution would most certainly have involved a variation of the *status quo*.

It cannot be admitted that the objection as usually formulated is valid. Yet no one who knows anything of modern international history can dismiss it as entirely groundless, or can view with equanimity the foundation of international society upon a rigid basis of international law as it exists to-day, unless those foundations include some system of developing and improving and altering the law itself. Because, though it is true that a large part of the field of international relations is not covered by the law, and would be subject to the more elastic treatment of conciliation and inquiry, nearly all the fundamental relations of States, as we have had to remark, are covered by international law, and it is precisely with regard to those relations that the need for change and development is most often and most acutely felt. It follows that there is a serious and dangerous *lacuna* in any scheme which does not provide for defining, altering and developing the

general rules of law which form, and are to form, the basis of international society.

A Practicable Proposal.

There are obvious difficulties in the way of meeting this requirement: but we believe that they are exaggerated in the imagination of nearly every one. What we require is some regular process of international legislation, and the very words "international legislation" are sufficient to scare the wits out of any ordinary person who has been hag-ridden by the bogey of utopianism. But international legislation in the sense in which we use the words, and in the sense in which the world to-day requires it, does not involve any such revolution as world-parliaments and world-federations. The world has already evolved in the last century a system of international legislation through conferences which, if regularized and developed, would answer all the needs of the present day. The mass of international legislation which has already resulted, and the wide and important fields of relationship which have thus successfully been brought under the regulation of new rules of international law, have been treated in several books recently published. The only two schemes, therefore, which attempt to provide for what we may call the international legislative function rightly proceed by developing this system of international conferences. Under the League to Enforce Peace the work of formulating and codifying rules of international law would be entrusted to regular conferences: while the International Council of the Fabian scheme would be in effect only a permanent international conference, of the type of the Hague Conferences or the Postal Union Conference, for general legislative purposes.

The Place of Force.

We have now dealt with the three main principles which underlie these schemes, and we have tried to show how they exist already in the world of facts and foreign policy, and how the attempt to apply and co-ordinate them has led to the resemblances and differences in the various schemes. There are still one or two other points which require mention. The first is the much-debated question of the enforcement of the general rules which are to regulate the relations of States. Nearly all the schemes quoted here provide that States shall use their armed forces collectively to ensure compliance with some of the obligations which the schemes would impose upon signatory States. But the schemes, as we have shown, create a variety of obligations, and they do not all agree as to those behind which the sanction of force shall be placed. *The Community of Nations* pamphlet definitely rejects the sanction of force. The League to Enforce Peace and the proposals of Lord Bryce's Group would place the sanction behind only the obligation to use the pacific machinery of settlement, the obligation to submit disputes either to a judicial tribunal or to a council of conciliation. The League of Nations Society goes a step farther, and in addition would bind States to use force, if necessary, to compel compliance with the decisions of a judicial tribunal (though not, apparently, with the decisions of a council of inquiry and conciliation). The provisions of the scheme of the Fabian Society are substantially the same elaborated, and with the addition that certain decisions of the International Council are enforceable.

These differences are irrelevant to the main principles which underly the schemes. The question whether human relations shall be regulated by general rules of right and

wrong is distinct from whether the sanction of collective force shall be placed behind the rules themselves. In other spheres of relationship force is a sanction of some rules but not of others ; and it will be found on reflection that the degree to which the rules are observed does not vary proportionately with the degree to which the sanction of force has or has not been applied. An almost universally observed rule regulating human relations in London is that you may not shoot or otherwise destroy your neighbour, however much you may hate him, and the rule is enforced collectively by the whole weight of police and public force. But at the other end of the scale it will be found that certain rules of good manners and snobbishness are obeyed no less, perhaps even more universally than the rule against murder, and yet there is no sanction of force behind these rules. This does not prove that we ought to abolish the police force and endeavour to get hooligans to realize that murder is as impossible as a lack of obsequiousness towards a duchess : but it does prove that the question of the advisability and possibility of establishing a system of regulating relations, whether individual or international, in accordance with general rules, is distinct from the question of whether it is advisable to compel compliance with the rules by collective force.

An International Executive.

Secondly, it should be remarked that all these schemes are from one point of view nothing but an attempt to co-ordinate already existing methods of settling international disputes and regulating international relations. Even this brief survey has shown that judicial tribunals, councils of conciliation, commissions of inquiry, conferences for defining, altering, and establishing international

laws, have all in isolation reached a considerable degree of development at the hands of diplomatists during the last hundred years. But their possibilities have been seriously impaired, and much of their utility has been lost, because there has been little or no attempt to co-ordinate them. This has had two results. First, the real and reasonable function of each method of settlement has been blurred, and diplomatists have failed to see that different kinds of disputes are amenable to different kinds of settlement. Secondly, when disputes have once arisen, it has been extremely difficult to apply any of the methods of settlement which do exist, because there has been no agreement beforehand as to how and when they shall be used, and, therefore, the question as to what method shall be tried is almost always itself an additional subject of dispute. It is a sign of the great development of international government, that in recent years, where dangerous international disputes have arisen—e.g. the Morocco question and the Serajevo murder—the question of how the dispute should be settled, whether by conference or tribunal or other pacific machinery, has itself been a most prominent part of the controversy. This shows what progress the world has made in the kind of international regulation and government and machinery which these schemes embody, and also how necessary is that co-ordination of the different methods which the schemes seek to create. In a sense, it would be strictly correct to say that the schemes do absolutely nothing but aim at defining by international agreement how existing methods of settlement shall be brought into operation when different kinds of disputes have actually arisen, and what steps diplomatists shall take to make the best use of the existing machinery already developed by diplomacy. It should, however, be remarked that this raises a question which has hardly been touched

by any of the authors of these schemes. As soon as you have a co-ordination of the machinery of pacific settlement and international organization, it is a question whether some international body answering to an executive is not required. It may be argued with some force that some central motive power for putting the machinery—and the right machinery—of settlement into motion is essential; and certainly, if, as some of the schemes contemplate, a decision will have to be made in certain cases as to what means are to be taken to compel a State to comply with its obligations, some international central body must be provided which can come to that decision and see that it is carried out. It is true that the Fabian scheme contemplates these executive functions being performed by its International Council, but the council seems rather a cumbersome and slow-moving body to be entrusted with executive functions. It may be suggested that what is wanted is a small, permanent, central body whose sole duty would be to watch over and promote the operation and fulfilment of the obligations as regards pacific settlement of the signatory Powers.

Membership of the League.

A word should be said as to the extremely important practical question of what States are to be admitted to the League which all the schemes postulate. There are two entirely different points connected with this question. Two kinds of restriction upon the membership have been suggested and discussed. The first is intended to avoid some of the difficulties which beset the Hague Conferences. The number of small States, particularly the South American Republics, admitted to those Conferences, notoriously interfered with their efficiency. They not only increased

the difficulty, always considerable, of obtaining any kind of agreement between Sovereign States. But the presence of an overwhelming majority of small States, able to outvote all the Great Powers, at once raises the extremely delicate problem of voting power. Some of the schemes, therefore, in order to meet this objection, propose a limitation on the right of admission to the League. Thus Lord Bryce's Group suggests the inclusion, as of right, only of the Great Powers and of any other European State that may wish to adhere, while in the introduction the suggestion is made that "later on, if the arrangement were found to work well in practice, it might be thrown open to all the States of the world." On the other hand the Fabian Society, which deals fully with this side of the question, in its draft treaty gives the right of admission to practically all the independent, sovereign States of the world, but attempts to meet the difficulties, described above, by elaborate provisions as to separate International Councils and as to voting power.

The second point in regard to membership issues out of the circumstances of the present war. It is natural that many people find it impossible to conceive of any co-operation in the near future between the Allies and the Central Powers. But every one of these schemes presupposes the fullest and fairest co-operation between the signatories of the treaties. Without a new spirit of co-operation the League might as well dissolve straight away with all the clauses of its treaty into the waste paper-basket. Hence the suggestion has been made by some people that the Central Powers should be excluded from the League. It is notable that none of these schemes adopts or countenances this proposal. They all, in so far as they deal with admission, leave it open to Germany and Austria to adhere to the treaty if willing to do so. The arguments in

favour of doing this appear to me unanswerable. A league which excluded Germany would inevitably appear to be and tend to become a league directed against Germany. But in that case the whole object and intention of these schemes would be frustrated. No new form of international relationship, government, and co-operation would issue out of them, but only the old, disastrous system of hostile alliances disguised very thinly under a new name. Hence an essential condition of the success of these schemes is that at least all the Great Powers should adhere to them.

The Bogey of Utopia.

Finally, we may end by referring to a subject which has more than once cropped up in our consideration of these various proposals. The most common criticism of any scheme of this sort is that it is Utopian. From experts on international law, like Mr. Bowles in the *Candid Review*, down to the journalist who is as ignorant of international law as he is about history, geography, peace, war, and everything else except the filling of eighty-four colums of marketable print between sunset and sunrise—there are a whole host of people who consider that they have finally disposed of any idea by calling it Utopian. But it is worth while examining for a moment this terrifying adjective. If it is meant that these schemes would not work in practice if they were adopted by the nations of the world, then history proves this to be extremely improbable. International tribunals have worked admirably in scores of cases; conciliation and commissions of inquiry have worked admirably whenever they have been tried; conferences have over and over again worked admirably, whether for the settling of disputes or for defining the rules for the regulation of international relations. This is the only

machinery which these Utopian schemes propose to use; and it is a curious thing if a scheme which merely co-ordinates existing practical machinery and endeavours to improve its working should prove more Utopian and unpractical than the unco-ordinated and obviously faulty machinery. The fact is, of course, that every new idea and proposal is Utopian. Everything is Utopian until it is tried. The world may elect that nations shall not regulate their relations in accordance with general rules, but by mutual destruction. In that case Europe at least, thanks to man's ingenuity in devising means of destroying and torturing himself and his fellows, will slowly or quickly relapse into complete barbarism. And in that case, too, the descendants of the editor of the *Candid Review*, contemplating from a bomb-proof cellar or trench the brief existence which they enjoy before finally being blown to pieces in the Great War, which will then have become a permanency, may hug themselves with satisfaction to see that these schemes have, after all, proved Utopian. In other words, man, noble in reason, can and must choose the method on which he is going to regulate his own relations. He can choose that marked out in these schemes; or, on the other hand, he can choose the method of force and frightfulness. But if he chooses the latter, it does not prove that the first is Utopian—though it certainly will prove his own destruction.

SCHEMES

THE following is a list of the schemes, quoted in the Introduction, and printed in full in the succeeding pages. Particulars as to price and publication have been added where available. No. VII, the Draft Treaty by a Dutch Committee, has been translated for the convenience of English readers, as the original is published in French.

I. League to Enforce Peace. 507, 5th Avenue, New York City, United States of America.

II. *Minimum Programme.* Central Organization for a Durable Peace, Theresiastraat 51, The Hague, Holland.

III. The League of Nations Society. Room 195, Central Buildings, Tothill Street, Westminster, London, S.W. 1. *League of Nations Publication*, No. 2.

IV. *Proposals for the Prevention of Future Wars*, by Viscount Bryce and others. George Allen and Unwin. 1s. net.

V. *Articles of a Treaty establishing a Supernational Authority that will prevent War*, by a Fabian Committee, published in *International Government*, by L. S. Woolf. George Allen and Unwin, and the Fabian Bookshop. 6s. net.

VI. *The Community of Nations Pamphlet.* Dr. Hodgkin, 7, Old Park Ridings, Winchmore Hill, N. St. Clement's Press. 1d.

VII. *Dutch Committee.* Central Organization for a Durable Peace. Avant-Projet d'un Traité Général relatif au Réglement Pacifique des Conflits Internationaux par la Commission Néerlandaise d'Etudes, Martinus Nijhoff, The Hague, Holland.

I

LEAGUE TO ENFORCE PEACE

WE believe it to be desirable for the United States to join a league of nations binding the signatories to the following :—

First : All justiciable questions arising between the signatory Powers, not settled by negotiation, shall, subject to the limitations of treaties, be submitted to a judicial tribunal for hearing and judgment, both upon the merits and upon any issue as to its jurisdiction of the question.

Second : All other questions arising between the signatories and not settled by negotiation, shall be submitted to a Council of Conciliation for hearing, consideration, and recommendation.

Third : The signatory Powers shall jointly use forthwith both their economic and military forces against any one of their number that goes to war, or commits acts of hostility, against another of the signatories before any question arising shall be submitted as provided in the foregoing.

Fourth: Conferences between the signatory Powers shall be held from time to time to formulate and codify rules of international law, which, unless some signatory shall signify its dissent within a stated period, shall thereafter govern in the decisions of the Judicial Tribunal mentioned in Article One.

II

MINIMUM PROGRAMME OF THE CENTRAL ORGANIZATION FOR A DURABLE PEACE

1. No annexation or transfer of territory shall be made contrary to the interests and wishes of the population concerned. Where possible, their consent shall be obtained by plebiscite or otherwise.

The States shall guarantee to the various nationalities included in their boundaries, equality before the law, religious liberty, and the free use of their native languages.

2. The States shall agree to introduce in their colonies, protectorates, and spheres of influence, liberty of commerce, or at least equal treatment for all nations.

3. The work of the Hague Conferences with a view to the peaceful organization of the Society of Nations shall be developed.

The Hague Conference shall be given a permanent organization and meet at regular intervals.

The States shall agree to submit all their disputes to peaceful settlement. For this purpose there shall be created, in addition to the existent Hague Court of Arbitration (*a*) a permanent Court of International Justice (*b*) a permanent International Council of Investigation and Conciliation. The States shall bind themselves to take

concerted action—diplomatic, economic, or military—in case any State should resort to military measures instead of submitting the dispute to judicial decision or to the mediation of the Council of Investigation and Conciliation.

4. The States shall agree to reduce their armaments. In order to facilitate the reduction of naval armaments, the right of capture shall be abolished and the freedom of the seas assured.

5. Foreign policy shall be under the effective control of the parliaments of the respective nations.

Secret treaties shall be void.

III

THE LEAGUE OF NATIONS SOCIETY

1. That a treaty shall be made as soon as possible, whereby as many States as are willing shall form a League binding themselves to use peaceful methods for dealing with all disputes arising among them.

2. That such methods shall be as follows:—

(*a*) All disputes arising out of questions of International Law or the Interpretation of Treaties shall be referred to the Hague Court of Arbitration, or some other Judicial Tribunal, whose decisions shall be final, and shall be carried into effect by the parties concerned.

(*b*) All other disputes shall be referred to and investigated and reported upon by a Council of Inquiry and Conciliation: the Council to be representative of the States which form the League.

3. That the States which are members of the League shall unite in any action necessary for insuring that every member shall abide by the terms of the Treaty.

4. That the States which are members of the League shall make provision for Mutual Defence—diplomatic,

economic, or military—in the event of any of them being attacked by a State, not a member of the League, which refuses to submit the case to an appropriate Tribunal or Council.

5. That any civilized State desiring to join the League shall be admitted to membership.

IV

PROPOSALS FOR THE PREVENTION OF FUTURE WARS

By Viscount Bryce and Others

INTRODUCTION.

Object of the proposals.

The hope and intention that one outcome of the present war shall be an international agreement to substitute for war methods of peaceable agreement has been expressed by prominent statesmen of the Entente and emphatically endorsed by President Wilson, who has offered the co-operation of the United States. The Allied Governments have now definitely included some such plan among the objects for which they are contending. They say in their note to President Wilson[1] that they "declare their wholehearted agreement with the proposal to create a League of Nations which shall assure peace and justice throughout the world. They recognize all the benefits which will accrue to the cause of humanity and civilization from the institution of international arrangements designed to prevent violent conflicts between the nations, and so framed as to provide the sanctions necessary to their enforcement, lest an illusory security should serve merely to facilitate fresh acts of aggression."

These aspirations, we believe, are shared by the peoples of all the States at war, and the support they have thus publicly received from

[1] January, 1917.

governments should bring them at once into the region of practical politics. But to embody them in an acceptable form will be no easy task.

It is clear that the reforms to be introduced must be drastic if they are to be effective. On the other hand, there must be continuity; for proposals involving too violent a breach with the established order are not likely to be seriously considered. What is attempted here is to put forward a scheme which, while it involves a real and radical advance upon the present organization of international relations, yet does not break so violently with the course of historical development as to be fairly described as Utopian.

With the deep underlying causes of war we do not here concern ourselves. Those causes, mainly connected, in the modern world, with false ideas and wrong feelings about the moral, political, and economic relations of States, of classes, and of individuals, can only be gradually dissipated by the spread of intelligence, knowledge, and goodwill. And until they are dissipated there can be no complete security for peace. Meantime, however, we think it possible, by such an arrangement as we suggest, to diminish very considerably the risk of war, and so to give time for the development of that educative process upon which we mainly rely.

Proposals for the reform of international relations vary in range and extent from complete schemes for a World-State, to im-

provements in the conduct of diplomacy. The project of a World-State, or even of a European Federation, we do not here advocate. It is perhaps a possibility of the distant future, and it well deserves the discussion it has provoked. But we do not believe it to be practicable at any near date; and there are many who do not think it desirable. Our aim is a more modest one. We desire to give definite shape to that idea of an association or union of independent and sovereign States which is being advocated by many leading men both in Europe and in America, and which, we believe, could be realized immediately at the conclusion of the war.

Union of States.

We propose, then, that existing States, retaining their sovereignty, should enter into a treaty arrangement with a view to the preservation of peace. What we contemplate is not a league of some States against others, but a union of as many as possible in the common interest of all.

What States to be admitted.

The question then immediately arises, what States shall be admitted to the Union? It might be urged, with a good deal of force, that all the States represented at the First or Second Hague Conference shall be admitted. But the admission, in the first instance, of so large a number of States (44) of which some (like those of Central and South America) are not intimately connected with European politics, might seriously hamper the earlier stages of the arrangement. On the other hand, any limitation must be arbitrary. The

suggestion in Clause 1 of the present draft is for the inclusion, as of right, of the Great Powers, and of any other European State that may wish to adhere. But this particular selection of States is not of the essence of the scheme. What is important is, that the membership should not be so narrow and exclusive that the Union shall appear to be a mere alliance directed against other States. For this reason it seems essential that at least all the Great Powers should be admissible as of right, whether or no they all choose to come in at the beginning. And there are others of the lesser European States, such as Holland, Belgium, the Scandinavian countries and Switzerland, which should obviously be included, as well as some of the chief South American States. Later on, if the arrangement were found to work well in practice, it might be thrown open to all the States of the world.

The terms of the treaty.

In formulating the conditions of the Union, we have taken as our starting-point the series of treaties recently concluded between the United States of America and a number of other States. The essence of these treaties is that the contracting parties agree not to have recourse to forcible measures until the matter in dispute between them has been submitted to a permanent Commission of Inquiry. Thus, under the treaty ratified in 1914 between the United Kingdom and the United States, the parties agree "that all disputes between them, of every nature whatsoever, other than disputes the settlement of which is provided for and in

fact achieved under existing agreements between the High Contracting Parties,[1] shall, when diplomatic methods of adjustment have failed, be referred for investigation and report to a Permanent International Commission, to be constituted in the manner prescribed in the next succeeding article ; and they agree not to declare war or begin hostilities during such investigation and before the report is submitted."

What we propose is, briefly, to generalize an arrangement of this kind, imposing a moratorium before recourse shall be had to war ; and to add sanctions to ensure the fulfilment of the treaty. We build thus upon existing facts and tendencies, and may fairly claim to be advocating not a revolutionary change, but an orderly development.

[1] The disputes excepted by these words are of the kind called by us "justiciable." The principal treaty dealing with them is that of April 14, 1908, which provides that—

"Differences which may arise of a legal nature, or relating to the interpretation of treaties existing between the two contracting Parties, and which it may not have been possible to settle by diplomacy, shall be referred to the permanent Court of Arbitration established at The Hague by the Convention of July 29, 1899, provided nevertheless that they do not affect the vital interests, the independence, or the honour of the two contracting States, and do not concern the interests of third parties."

There is also a treaty in force (of January 11, 1909) which provides for the reference of disputes arising between the United States and the Dominion of Canada to a Permanent Commission for examination and report. The Commission may also offer conclusions and recommendations. And there is also a treaty (of January 27, 1909) providing for the reference to arbitration of disputes about the North Atlantic Fisheries,

The members, then, of our proposed Union would bind themselves by treaty :—

(1) To refer all disputes that might arise between them, if diplomatic methods of adjustment had failed, either to an arbitral tribunal for judicial decision, or to a council of conciliation for investigation and report (Clauses 2 and 9).

(2) Not to declare war or begin hostilities or hostile preparations until the tribunal has decided or the council has reported (Clause 17).

(3) To take concerted action, economic and forcible, against any signatory Power that should act in violation of the preceding condition (Clause 19).

(4) To take similar action against any non-signatory Power that should declare war or begin hostilities or hostile preparations against a signatory Power, without first submitting the dispute to peaceable settlement by the method indicated in (1) (Clause 19).

The sanction of the treaty.

Coercive action by the members of the Union would be a treaty obligation only in the case where a State had resorted to force before submitting the dispute to peaceable settlement. For the purposes of such action it is not proposed to abolish national armaments and substitute a force under international control. But it might prove desirable and practicable that the members of the Union should create, concurrently with the setting up

of the Council of Conciliation, an international executive authority with power to call into action the forces of the League, when the occasion should arise, and to direct operations in its name.

Military operations, however, are not the only form of coercion possible, and the agreement contemplates also economic pressure. In some cases this might be as effective as armed force and as easy of application. A whole series of such measures can be conceived, differing in their severity and in their applicability to different cases: e.g. an embargo on the shipping of the recalcitrant State; a prohibition of loans to it; cutting it off from railway, postal, telegraphic, and telephonic communication; prohibition of exports to or imports from it, supported if necessary by what international lawyers call a "pacific blockade." Applied against a small Power, such measures as these would be likely, by themselves, to be effective. Applied to a Great Power, they might be met by armed force, which would have to be repelled by force. But the possibility of a concerted use of the boycott should be seriously considered, when the case arises, by the signatories to such a Union as we are suggesting.

Passing from this question of the sanction to the machinery for peaceable settlement, our proposal is that disputes between the treaty Powers should be referred either to arbitration or to conciliation. We distinguish, therefore, two classes of disputes and two processes of settlement.

Justiciable disputes.

(1) The first class of disputes we call "justiciable." They are such as are capable of settlement by judicial determination; for example, the interpretation of a treaty, or any question either of international law or of fact, where the fact in dispute is one which, if proved, would constitute a breach of international duty (Clause 4). In case of disagreement as to whether a dispute is justiciable or not, the arbitral tribunal is to decide (Clause 5).

All disputes of a justiciable character, including those that involve honour and vital interests, are to be referred to the Hague Court, as it now is, or may in future be constituted, or to some other arbitral court.

In framing treaties of arbitration it has been usual for States to exclude from the scope of the treaty cases involving "honour" or "vital interests." We have not excluded them in our draft, partly because we propose to determine by this judicial procedure those cases only which are properly susceptible of such procedure, leaving to conciliation cases to which legal principles and methods cannot be applied, and which will comprise at any rate the great bulk of those involving "vital interests" or "honour"; partly because it seems essential to an international order that, where law is recognized, it should be applied, whatever the consequences. A State, for instance, ought to be compelled to submit to judicial process

any dispute about territorial boundaries involving treaty rights, however important it may consider the possession of the piece of territory affected to be to its "vital interests." As to "honour," in any reputable sense of that term, it can never be to a nation's honour to repudiate a legal obligation.

Non-justiciable disputes.

(2) The other class of disputes, and, of course, the class most likely to lead to war, comprises those which are not justiciable; such as, for instance, those which arise out of the general economic and political rivalry of States, or, it may be, from the discontent of nationalities within a State, where such discontent commands the sympathy of a kindred people. For the settlement of such disputes a judicial tribunal is not the best authority. It is proposed, therefore, to institute for this purpose a new international body which we call the Council of Conciliation. The functions of the Council would be similar to those hitherto performed by the diplomatic representatives of the Powers when they meet in concert to discuss difficult questions; but it is intended that the composition of the Council should enable its members to take a more impartial, comprehensive, and international view than diplomatists have hitherto shown themselves inclined to take, and to suggest a radical settlement rather than a mere temporary compro-

mise, likely to be broken as soon as some Power is ready to risk war.

The Council of Conciliation.

The difficulty, of course, will be to secure the appointment of highly qualified impartial men. Each Power must appoint its own representative, or representatives, and determine the method of appointment. But it is prescribed in our draft (Clause 7) that the appointments shall be made for a fixed term of years, the Council being thus always complete and in being.[1] The object of this provision is, that the members shall not be exposed to the suspicion of having been appointed for the purposes of a particular dispute, and because of their supposed views upon it. Nothing further on this subject is laid down in the draft. But it would seem desirable, if not essential, that the members should not act under constant instructions from their governments, but should deliberate and vote freely according to their best judgment, in the interests of the whole society of nations. On the other hand, it is to be presumed that the members will be, and remain, sufficiently in touch with public opinion in their own country not to be likely to assent to proposals violently in conflict with that opinion; and also will be of sufficient capacity to have influence with the Council, and of sufficient weight in their own country to ensure a fair consideration there of any

[1] A non-signatory Power sending a representative under Clause 8 would, of course, appoint its representative *ad hoc* only.

proposals with which they may associate themselves. The fulfilment of these conditions can only be ensured by the public opinion of the appointing States. And with a view to making that opinion effective it is to be presumed that in every country possessing representative institutions the names of the members to be appointed will be submitted to the approval of the Legislature.

The objection may be taken that governments will never consent to allow decisions that may vitally affect their nation to be agreed to by representatives who have not been subject to their constant instructions. But this objection misapprehends the purpose and powers of the proposed Council. It is a Council of Inquiry and Conciliation only. It would have no executive power, and its decisions would not bind the governments. It would represent, and express to the public opinion of the nations, the views of an international body as to that solution of an urgent problem that is most in accordance with equity and the general interest. And if it is to do this honestly and effectively, it is essential that its members should not take a narrowly national view, nor be mere agents of possibly reactionary governments.

The question arises whether the Powers should be equally represented on the Council. This does not seem to be a point of fundamental importance, since the functions of the Council are conciliatory only, and not executive. But since it is likely that the greater

Powers would have a larger number of men qualified to be members, they might be given a greater representation : say three to each of the Great Powers, and one at least to each of the rest.

The Council, as has been explained, will mediate between the disputants and endeavour to arrange a settlement which shall not be a mere compromise but shall rest upon intelligible and accepted principles and have in it some guarantee of permanence. Sometimes it may be able to arrange such a settlement privately with the parties. But in every case where it fails to do this it should publish a report or reports dealing with the whole situation and setting forth its recommendations and the grounds on which they are based (Clause 11). These reports and recommendations would then form the subject of debates in national Legislative Assemblies, and of discussion at public meetings and in the press. And sufficient time being allowed for this (Clause 17) it is not unreasonable to hope that the best public opinion of all countries would support the Council in pressing for an amicable solution on the lines suggested, and that the disputants would yield to that pressure. Should this hope not be fulfilled, then it must be clearly understood that no Power would be under treaty obligation either to accept the recommendations of the Council or to put pressure upon a Power refusing to accept them. The States would retain on these points all their liberty of action. All that the treaty would prescribe

is, that if such a situation arises, the Powers should meet in conference to consider whether or not it is practicable or desirable for them to take collective action (Clause 20). This conference would be composed of the diplomatic representatives of the Powers, and would proceed in the ordinary way of such conferences, all the governments being ultimately free to take what action they think expedient or right.

It is possible then, that from such a situation war might, in the last resort, arise. It is not claimed that the Union would make war impossible. But it is believed that the enforced period of delay, the consideration by an impartial Council, and the publicity given to its recommendations would be very likely to prevent war by rallying the public opinion of the world in favour of peace; and that, in the worst case, the area of war would be likely to be restricted; for a Power making war in defiance of the recommendations of the Council could not rely on support from the other signatory Powers.

Popular control.

It will be observed that our plan implies and presupposes such a measure of popular control over international relations as is involved in the publication of the results of impartial inquiry, and their discussion in representative assemblies and in the press. Without pretending that public opinion is always and everywhere pacific, we believe that, when it is properly instructed, and when time is given for passions to cool, it is more likely to favour peace than do the secret operations of diplomacy.

The distinction between the proposed Union and the Concert of Europe.

It may be worth while to emphasize the difference between the Union we are proposing and what has been known as the Concert of Europe. In the first place, the Union would not be confined to European Powers. In the second place, it would bind the signatory Powers, under the sanction, in the last resort, of force, to submit their disputes to peaceable settlement, before having recourse to military measures. In the third place, it would create for the discussion of the most difficult and contentious questions an impartial and permanent Council, which would have some advantages over the present machinery of the Concert. We attach much importance to the creation of such a permanent international organ, and believe that its ultimate and indirect effects may be even more important than its operations in particular cases.

Such, in outline, is the scheme proposed. A few words may now be said as to some of the more obvious and serious objections that may be taken against it.

Hostile preparations.

1. The essence of the proposal is to impose a period of delay before recourse can be had to hostilities, the period to be devoted to attempts at peaceable settlement. But what exactly is to be accounted "recourse to hostilities"? The phrase in our draft is "declare war or begin hostilities or hostile preparations against a signatory Power" (Clauses 17 and 19). We are well aware that the term "hostile preparations" is a vague one, and in some cases

would be difficult to interpret. Questions may arise as to whether a mobilization is directed against a particular Power, and as to what, short of mobilization, is a hostile preparation against a particular Power. The circumstances which would constitute a hostile preparation do not seem capable of exact definition, and we have been urged, for this reason, to omit the term from our scheme. But it is obvious that a strategical disposition of forces on a particular frontier might give, in certain cases, the Power having recourse to it an advantage, as great as it could attain by the actual invasion of the territory of a neighbouring State. We feel, therefore, that we must include the case of hostile preparations against a signatory Power as one of the events against which some sanction must be provided, even though a precise definition of the term cannot be formulated.

Limitation of armaments.

If an agreement limiting armaments were arrived at, a breach of the agreement would, *prima facie*, be regarded as a hostile preparation. For this reason, apart from any other, such an agreement would appear to be highly desirable, and the draft gives power to the Council to make and submit to the Powers suggestions in that sense (Clause 13). We think that the comparative security which the Union would guarantee to its members, as well as the economic exhaustion following the present war, and the determination of the peoples to reduce this tremendous burden,

should make it possible for such an agreement to be entered into, in spite of the well-known difficulties it must encounter.

The concerting of coercive measures.

2. In case any Power declares war or begins hostilities or hostile preparations against a signatory Power, without first referring the dispute to peaceable settlement and awaiting the prescribed period, the signatory Powers are under obligation to apply coercive measures, both economic and forcible, against the Power so acting (Clause 19). But they would have to agree upon what those measures shall be, and by whom and how they are to be carried out. It may be urged, therefore, that difficulties are likely to arise; since either the Powers must be unanimous, in which case action may be prevented by the refusal of a single Power, or a majority must decide, in which case Powers that are liable to less risk or responsibility may outvote Powers that are liable to more. The difficulty is real, but it has not been thought necessary to complicate the draft by entering upon the details of a possible solution. It is the kind of difficulty the Powers must settle for themselves, either by common sense round their council-table, or by forming some kind of constitution involving a graduation of voting power. And since they would be under treaty obligation to take immediate measures, the necessities of the case would compel a prompt solution.

The scheme will not stereotype the *status quo*.

3. A more fundamental objection aims at the whole scope of our scheme. "If you are successful," it may be said, "what you will really do is to stereotype the *status quo*, as it may be

established after this war. But no status can be permanently satisfactory in a changing world. What is required is a machinery for altering international relations as circumstances change, but for altering them in a peaceable way." To this we reply, first, that our scheme, though it delays war, does not attempt to prohibit it. It leaves war as a last escape from an impossible situation. Secondly, that the recommendations of the proposed Council of Conciliation will serve as suggestions to the Powers for a peaceable alteration of the *status quo*. Thirdly, that the draft gives the Council power, even when there is not a dispute, but the possibility of one is foreseen, to make suggestions for dealing with the whole situation out of which such disputes may arise (Clause 12) ; and, generally, to make proposals which may lead to the avoidance of war (Clause 13). These are very wide powers ; and if they were used, the Council might become the originator of new international arrangements and rules.

Development of international law.

The development of international law, both in scope and in precision, is one of the most essential needs of the future ; and the question by what body it may best be developed is a very important one. The most obvious body is the Hague Conference. And it is to be hoped and expected that after the war the Conference will be given a permanent organization, will meet at regular intervals, and will address itself to the codification and development of international law. On the other

hand, if a Union such as we suggest should be formed and should not include all the States represented at The Hague, it would seem possible and desirable that the States participating should adopt rules of law binding on their members; and the American League to Enforce Peace makes this one of the obligatory functions of the proposed league. Such rules of law might afterwards be endorsed by the Hague Conference. We are not at all opposed in principle to this procedure, though we have not thought it necessary to embody it in our proposals.

In any development of an International Organ with legislative powers, questions must arise, at some stage, as to equality or inequality of voting power, and the binding of a minority by a majority. We do not here discuss or prejudge these questions; for, while recognizing the great value of a Legislative Body to complete international organization, we doubt whether the time is ripe for constituting such a Body. The present scheme is put forward, not as ideal, but as something which we believe to be immediately practicable, and which would constitute a great advance upon the present international anarchy. The very recognition of its defects in practice may and should lead to its development and completion. Meantime, we submit it to candid, and, we hope, friendly criticism.

PROJECT FOR A TREATY.

1. The parties to the treaty arrangement contemplated in the succeeding clauses to be the Great Powers (i.e. the Great Powers of Europe, the United States, and Japan), or so many of them as may desire to enter into it; such of the other European Powers as are willing to become parties to it; and any other Powers which may hereafter be admitted by the Powers aforesaid.

JUSTICIABLE DISPUTES.

Justiciable disputes to be referred to arbitration.

2. The signatory Powers to agree to refer to the existing Permanent Court of Arbitration at The Hague, or to the Court of Arbitral Justice proposed at the second Hague Conference, if and when such Court shall be established, or to some other arbitral tribunal, all disputes between them (including those affecting honour and vital interests), which are of a justiciable character and which the Powers concerned have failed to settle by diplomatic methods.

Awards of the arbitral tribunal to be accepted.

3. The signatory Powers so referring to arbitration to agree to accept, and give effect to, the award of the tribunal.

Definition of justiciable disputes.

4. "Disputes of a justiciable character" to be defined as "disputes as to the interpretation

of a treaty, as to any question of international law, as to the existence of any fact which, if established, would constitute a breach of any international obligation, or as to the nature and extent of the reparation to be made for any such breach."

Court to decide whether a dispute is justiciable.

5. Any question which may arise as to whether a dispute is of a justiciable character, to be referred for decision to the Court of Arbitral Justice when constituted; or until it is constituted, to the existing Permanent Court of Arbitration at The Hague.

Permanent Council of Conciliation.

Constitution and objects of Council.

6. With a view to the prevention and settlement of disputes between the signatory Powers which are not of a justiciable character, a permanent Council of Conciliation to be constituted.

Appointment and term of office of members.

7. The members of the Council to be appointed by the several signatory Powers for a fixed term of years, and vacancies to be filled up by the appointing Powers, so that the Council shall always be complete and in being.[1]

Temporary representation of non-signatory Powers.

8. In order to provide for the case of disputes between a signatory Power and an outside Power which is willing to submit its case to the Council, provision to be made for the temporary representation of the latter.

[1] For some observations on the method of appointment, the number and character of the members to be appointed by each Power, and the method of voting, see Introduction, p. 76.

Powers to submit non-justiciable cases to the Council.

9. The signatory Powers to agree that every party to a dispute, not of a justiciable character, the existence of which might ultimately endanger friendly relations with another signatory Power or Powers, and which has not been settled by diplomatic methods, will submit its case to the Council with a view to conciliation.

Council to consider disputes and invite submission of cases.

10. Where, in the opinion of the Council, any dispute exists between any of the signatory Powers which appears likely to endanger their good relations with each other, the Council to consider the dispute and to invite each Power concerned to submit its case with a view to conciliation.

Council to report on disputes considered.

11. Unless, through the good offices of the Council or otherwise, the dispute shall have previously been settled between the parties, the Council to make and publish, with regard to every dispute considered by it, a report or reports, containing recommendations for the amicable settlement of the dispute.

General power to Council to make suggestions with a view to conciliation.

12. When it appears to the Council that, from any cause within its knowledge, the good relations between any of the signatory Powers are likely to be endangered, the Council to be at liberty to make suggestions to them with a view to conciliation, whether or not any dispute has actually arisen, and, if it considers it expedient to do so, to publish such suggestions.

Council to have power to make suggestions for the limitation of armaments.

13. The Council to be at liberty to make and submit for the consideration of the signatory Powers, suggestions as to the limitation

or reduction of armaments, or any other suggestions which in its opinion would lead to the avoidance of war or the diminution of its evils.

Signatory Powers to furnish Council with all necessary facilities for discharge of its functions.

14. The signatory Powers to agree to furnish the Council with all the means and facilities required for the due discharge of its functions.

Deliberations of Council.

15. The Council to deliberate in public or in private, as it thinks fit.

Committees of the Council.

16. The Council to have power to appoint committees, which may or may not be composed exclusively of its own members, to report to it on any matter within the scope of its functions.[1]

Moratorium for Hostilities.

Signatory Powers to abstain from hostile action during period prescribed.

17. Every signatory Power to agree not to declare war or begin hostilities or hostile preparations against any other signatory Power (*a*) before the matter in dispute shall have been submitted to an arbitral tribunal, or to the Council; or (*b*) within a period of twelve months after such submission; or (*c*), if the award of the arbitral tribunal or the report of the Council, as the case may be, has been published within that time, then not to declare war or begin hostilities or hostile preparations within a period of six months after the publication of such award or report.[2]

[1] It will be observed that it is not proposed to confer any executive power on the Council.

[2] If an agreement for limitation of armaments had been arrived at, any departure from the agreement would presumably be taken to be a "hostile preparation," until the contrary were shown. (See Introduction, p. 81.)

Limitation of Effect of Alliances.

Limitation on scope of alliances.

18. The signatory Powers to agree that no signatory Power commencing hostilities against another, without first complying with the provisions of the preceding clauses, shall be entitled, by virtue of any now existing or future treaty of alliance or other engagement, to the military or other material support of any other signatory Power in such hostilities.

Enforcement of the Preceding Provisions.

Enforcement of provisions for reference of disputes to arbitration or conciliation.

19. Every signatory Power to undertake that in case any Power, whether or not a signatory Power, declares war or begins hostilities or hostile preparations against a signatory Power, (*a*) without first having submitted its case to an arbitral tribunal, or to the Council of Conciliation, or (*b*) before the expiration of the hereinbefore prescribed periods of delay, it will forthwith, in conjunction with the other signatory Powers, take such concerted measures, economic and forcible, against the Power so acting, as, in their judgment, are most effective and appropriate to the circumstances of the case.

Measures to give effect to reports of the Council.

20. The signatory Powers to undertake that if any Power shall fail to accept and give effect to the recommendations contained in any report of the Council, or in the award of the arbitral tribunal, they will, at a Conference to be forthwith summoned for the purpose, consider, in concert, the situation

which has arisen by reason of such failure, and what collective action, if any, it is practicable to take in order to make such recommendations operative.[1]

[1] The measures contemplated in paragraphs 19, 20 would, of course, be taken by the governments of the signatory Powers acting in concert, and not by the Council of Conciliation. (See Introduction, pp. 76 and 78.)

V

THE FABIAN SOCIETY DRAFT TREATY

I.—INTRODUCTION.

THE object of the Committee has been limited and practical. It has sought only to formulate, as a basis for international discussion and in the light of history and experience—especially as elucidated by the Memorandum by L. S. Woolf, the heads of an international agreement by which future wars may be as far as possible prevented. There is at least a hope that, as a result of the existing terrible experience, a war-weary world may presently be willing to construct some new international machinery which can be brought into play to prevent the nations from again being stampeded into Armageddon.

The first difficulty will be to get the Governments, either of the eight Great Powers or of the forty lesser States—all of them necessarily wary and suspicious—to agree to the creation of any such international machinery. It is therefore essential, if we are to be practical, to limit our proposals to that for which there is at least some reason to expect consent. What is suggested is, accordingly, no merging of independent national units into a "world-State," though to this Utopia future ages may well come. No impairment of sovereignty and no sacrifice of independence are proposed. Each State even

remains quite free to go to war, in the last resort, if the dispute in which it is engaged proves intractable. Moreover, national disarmament—to which at this moment no State will even dream of taking the smallest step—is left to come about of itself, just as the individual carrying of arms falls silently into desuetude as and when fears of aggression die down before the rule of the law.

The new world that we have to face at the conclusion of the war will, perforce, start from the ruins of the old. All that will be immediately practicable can be presented as only a more systematic development of the rapidly multiplying Arbitration Treaties of the present century, and the conclusions of the two Conventions at The Hague. Only on some such lines, it is suggested, can we reasonably hope, at this juncture, to get the Governments of the world to come into the proposed agreement.

The alternative to war is law. What we have to do is to find some way of deciding differences between States, and of securing the same acquiescence in the decision as is now shown by individual citizens in a legal judgment. This involves the establishment of a Supernational Authority, which is the essence of our proposals.

What is suggested is, first, the establishment of an International High Court, to which the nations shall agree to submit, not all their possible differences and disputes, but only such as are, by their very nature, "legal" or "justiciable." Experience warrants the belief that the decisions of such a judicial tribunal, *confined to the issues which the litigant States had submitted to it*, would normally be accepted by them. Provision is made, however, for a series of "sanctions other than war," principally economic and social in character, by which

all the Constituent States could bring pressure to bear on any State not obeying a decision of the Court.

Alongside the International High Court, but without authority over it, there should be an International Council, composed of representatives of such of the forty or fifty independent Sovereign States of the world as may choose voluntarily to take part. It is proposed that this International Council should be differently regulated and organized according (1) as it acts as a World Legislature for codifying and amending international law, and for dealing with questions interesting only America or Europe respectively; or (2) is invoked by any Constituent State to mediate in any dispute not of a nature to be submitted to the International High Court. It is not suggested that the enactments or the decisions of the International Council should, except to a very limited extent, be binding on States unwilling to ratify or acquiesce in them. Subject to the provisions made to prevent the proceedings being brought to naught by a tiny and unimportant minority, on matters of secondary importance, it is suggested that the International Council must content itself, at any rate at the outset, with that "greatest common measure" which commands general assent.

Provision is made for an International Secretariat and an International Official Gazette, in which all treaties or agreements will be immediately published, no others being recognized or regarded as enforceable.

In view of the fact that no fewer than twenty-one out of the forty to fifty independent Sovereign States of the world are in America, the suggestion is made that there should be separate Councils for Europe and America respectively, with suitable provision in each case for the safeguarding of the interest of other States. Moreover,

as the position of the eight Great Powers (Austria-Hungary, the British Empire, France, Germany, Italy, Japan, Russia, and the United States), which govern among them three-fourths of all the population of the world and control nine-tenths of its armaments, differs so greatly from that of the other two score States, provision is made both for their meeting in separate Councils and for ratification of all proceedings by the Council of the Great Powers. It is nowhere suggested that any one of the eight Great Powers can—except by its own express ratification—be made subject to any enactment or decision of the International Council that it may deem to impair its independence or its territorial integrity, or to require any alteration of its internal laws.

It follows, accordingly, that each State retains the right to go to war if, after due delay, it chooses to do so.

What the several States are asked to bind themselves to are—(*a*) to submit all disputes of the "legal" or "justiciable" kind (but no others) to the decision of the International High Court, unless some special tribunal is preferred and agreed to; (*b*) to lay before the International Council, for inquiry, mediation, and eventual report, all disputes not "justiciable" by the International High Court or other tribunal; (*c*) in no case to proceed to any warlike operation, or commit any act of aggression, until twelve months after the dispute had been submitted to one or the other body; (*d*) to put in operation, if and when required, the sanctions (other than war) decreed by the International High Court; and, possibly the most essential of all these proposals, (*e*) *to make common cause, even to the extent of war, against any Constituent State which violates this fundamental agreement.*

It remains to be said only that the adoption of this

plan of preventing war—the establishment of the proposed Supernational Authority—is not dependent on, and need not wait for, the adhesion of all the independent Sovereign States of the world.

II.—THE ARTICLES.

The signatory States, desirous of preventing any future outbreak of war, improving international relations, arriving by agreement at an authoritative codification of international law, and facilitating the development of such joint action as is exemplified by the Universal Postal Union, hereby agree and consent to the following Articles.

The Establishment of a Supernational Authority.

1. There shall be established as soon as possible within the period of one year from the date hereof—(*a*) an International High Court for the decision of justiciable issues between independent Sovereign States; (*b*) an International Council with the double function of securing, by common agreement, such international legislation as may be practicable, and of promoting the settlement of non-justiciable issues between independent Sovereign States; and (*c*) an International Secretariat.

The Constituent States.

2. The Independent Sovereign States to be admitted as Constituent States, and hereinafter so described, shall be:

(*a*) The belligerents in the present war;

(*b*) The United States of America;

(*c*) Such other independent Sovereign States as have

been represented at either of the Peace Conferences at The Hague, and as shall apply for admission within six months from the date of these Articles; and

(*d*) Such other independent Sovereign States as may hereafter be admitted by the International Council.

Covenant against Aggression.

3. It is a fundamental principle of these Articles that the Constituent States severally disclaim all desire or intention of aggression on any other independent Sovereign State or States, and that they agree and bind themselves, under all circumstances, and without any evasion or qualification whatever, never to pursue, beyond the stage of courteous representation, any claim or complaint that any of them may have against any other Constituent State, without first submitting such claim or complaint, either to the International High Court for adjudication and decision, or to the International Council for examination and report, with a view to arriving at a settlement acceptable to both parties.

Covenant against War except as a Final Resource.

4. The Constituent States expressly bind themselves severally under no circumstances to address to any Constituent State an ultimatum, or a threat of military or naval operations in the nature of war, or of any act of aggression; and under no circumstances to declare war, or order any general mobilization, or begin military or naval operations of the nature of war, or violate the territory or attack the ships of another State, otherwise than by way of repelling and defeating a forcible attack actually made by military or naval force, until the matter in dispute has been submitted as aforesaid to the Inter-

national High Court or to the International Council, and until after the expiration of one year from the date of such submission.

On the other hand, no Constituent State shall, after submission of the matter at issue to the International Council and after the expiration of the specified time, be precluded from taking any action, even to the point of going to war, in defence of its own honour or interests, as regards any issues which are not justiciable within the definition laid down by these Articles, and which affect either its independent sovereignty or its territorial integrity, or require any change in its internal laws, and with regard to which no settlement acceptable to itself has been arrived at.

The International Council.

5. The International Council shall be a continuously existing deliberative and legislative body composed of representatives of the Constituent States, to be appointed in such manner, for such periods and under such conditions as may in each case from time to time be determined by the several States.

Each of the eight Great Powers—viz. Austria-Hungary, the British Empire, France, Germany, Italy, Japan, Russia, and the United States of America—may appoint five representatives. Each of the other Constituent States may appoint two representatives.

Different Sittings of the Council.

6. The International Council shall sit either as a Council of all the Constituent States, hereinafter called the Council sitting as a whole, or as the Council of the eight Great Powers, or as the Council of the States other than the

eight Great Powers, or as the Council for America, or as the Council for Europe, each such sitting being restricted to the representatives of the States thus indicated.

There shall stand referred to the Council of the eight Great Powers any question arising between any two or more of such Powers, and also any other question in which any of such Powers formally claims to be concerned, and requests to have so referred.

There shall also stand referred to the Council of the eight Great Powers, for consideration and ratification, or for reference back in order that they may be reconsidered, the proceedings of the Council for America, the Council for Europe, and the Council of the States other than the eight Great Powers.

There shall stand referred to the Council for Europe any question arising between two or more independent Sovereign States of Europe, and not directly affecting any independent Sovereign State not represented in that Council, provided that none of the independent Sovereign States not so represented formally claims to be concerned in such question, and provided that none of the eight Great Powers formally claims to have it referred to the Council of the eight Great Powers or to the Council sitting as a whole.

There shall stand referred to the Council for America any question arising between two or more independent Sovereign States of America, not directly affecting any independent Sovereign State not represented in that Council, provided that none of the independent Sovereign States not so represented formally claims to be concerned in such question, and provided that none of the eight Great Powers formally claims to have it referred to the Council of the eight Great Powers or to the Council sitting as a whole.

There shall stand referred to the Council for the States other than the eight Great Powers any question between two or more of such States, not directly affecting any of the eight Great Powers and which none of the eight Great Powers formally claims to have referred to the Council sitting as a whole.

The Council shall sit as a whole for—

(*a*) General legislation and any question not standing referred to the Council of the eight Great Powers, the Council of the States other than the eight Great Powers, the Council for Europe, or the Council for America respectively;

(*b*) The appointment and all questions relating to the conditions of office, functions, and powers of the International High Court, of the International Secretariat, and of the President and other officers of the International Council;

(*c*) The settlement of Standing Orders, and all questions relating to procedure and verification of powers;

(*d*) The financial affairs of the International Council and International High Court, the allocation of the cost among the Constituent States, and the issue of precepts upon the several Constituent States for the shares due from them;

(*e*) The admission of independent Sovereign States as Constituent States; and

(*f*) Any proposal to alter any of these Articles, and the making of such an alteration.

Membership of the Council and Voting.

7. All the Constituent States shall have equal rights to participation in the deliberations of the International Council. Any Constituent State may submit to the Inter-

national Council sitting as a whole any proposal for any alteration of International Law, or for making an enactment of new law; and also (subject to the provisions of these Articles with regard to the submission of justiciable issues to the International High Court) may bring before the Council any question, dispute, or difference arising between it and any other Constituent State.

When the International Council is sitting as the Council of the eight Great Powers or as the Council of the States other than the eight Great Powers, each of the States represented therein shall have one vote only.

When the International Council is sitting as a whole or as the Council for Europe, or as the Council for America, the number of votes to be given on behalf of each State shall be as follows:—

[*The scale of voting strength will require to be prescribed in the treaty.*]

Legislation subject to Ratification.

8. It shall be within the competence of the International Council to codify and declare the International Law existing between the several independent Sovereign States of the world; and any such codifying enactment, when and in so far as ratified by the Constituent States, shall be applied and enforced by the International High Court.

It shall also be within the competence of the International Council from time to time, by specific enactment, to amend International Law, whether or not this has been codified; and any such enactment, when and in so far as ratified by the several Constituent States, shall be applied and enforced by the International High Court.

Whenever any Constituent State notifies its refusal to ratify as a whole any enactment made by the International

Council, it shall at the same time notify its ratification of such part or parts of such enactment as it will consent to be bound by; and the International Council shall thereupon re-enact the parts so ratified by all the Constituent States, and declare such enactment to have been so ratified, and such enactment shall thereupon be applied and enforced by the International High Court.

When any enactment of the International Council making any new general rule of law has been ratified wholly or in part by any two or more Constituent States, but not by all the Constituent States, it shall, so far as ratified, be deemed to be binding on the ratifying State or States, but only in respect of the relations of such State or States with any other ratifying State or States; and it shall be applied and enforced accordingly by the International High Court.

Query, add these additional Articles:

Legislation on Matters of Secondary Importance by Overwhelming Majorities.

8A. *When any enactment of the International Council does not affect the independent sovereignty or the territorial integrity and does not require any change in the internal laws of any Constituent State, and has been passed by a three-fourths majority of the votes given by the representatives present and voting at the Council sitting as a whole (query, add: provided that such majority includes all the eight Great Powers), it shall, irrespective of ratification by the several Constituent States, and notwithstanding objection by one or more of them, be deemed to have become law and to be binding on all the Constituent States, and shall be applied and enforced by the International High Court.*

The International High Court shall alone decide whether any enactment of the International Council affects the independent sovereignty or the territorial integrity, or requires any change in the internal laws of any Constituent State; and every enactment of the Council shall be presumed not to affect the independent sovereignty or the territorial integrity, or to require any change in the internal laws of any Constituent State until the International High Court has decided to the contrary.

Facultative Enforcement by Overwhelming Majority of Legislation carried by Overwhelming Majorities even if of Primary Importance, and not ratified by a Small Minority of the Minor States.

8B. *When any enactment of the International Council sitting as a whole has not received a three-fourths majority of the votes given by the representatives present and voting, or when such enactment has received such a majority but affects the independent sovereignty or the territorial integrity, or requires any change in the internal laws of any Constituent State, and when such enactment has not been ratified by all the several Constituent States, it shall nevertheless be within the competence of the International Council sitting as a whole, by a three-fourths majority of the votes given by the representatives present and voting (query, add: provided that such majority includes all the eight Great Powers), to refer to the International High Court for decision the question of whether any Constituent State has, by any positive act changing the* status quo, *committed what would have been a contravention of the said enactment if it had been effectively made law by the Council and applied by the Court. If the decision of the Court should be that such contravention by positive act changing the* status quo *has taken place, it shall*

be within the competence of the Council sitting as a whole, but only by such special majority as aforesaid, to invite the Constituent State committing such contravention to make reparation or pay compensation; and the Council may, if it thinks fit, by the same special majority as aforesaid, require any or all of the Constituent States to enforce its decision in the same way as if it were a decision of the High Court by any sanction other than that of military or naval operations in the nature of war.

Non-Justiciable Issues.

9. When any question, difference, or dispute arising between two or more Constituent States is not justiciable as defined in these Articles, and is not promptly brought to an amicable settlement, and is of such a character that it might ultimately endanger friendly relations between such States, it shall be the duty of each party to the matter at issue, irrespective of any action taken or not taken by any other party, to submit the question, difference, or dispute to the International Council with a view to a satisfactory settlement being arrived at. The Council may itself invite the parties to lay any such question, difference, or dispute before the Council, or the Council may itself take any such matter at issue into its own consideration.

The Constituent States hereby severally agree and bind themselves under no circumstances to address to any other Constituent State an ultimatum or anything in the nature of a threat of forcible reprisals or naval or military operations, or actually to commence hostilities against such State, or to violate its territory, or to attack its ships, otherwise than by way of repelling and defeating a forcible attack actually made by naval or military force,

before a matter in dispute, if not of a justiciable character as defined in these Articles, has been submitted to or taken into consideration by the International Council as aforesaid for investigation, modification, and report, and during a period of one year from the date of such submission or consideration.

The International Council may appoint a Permanent Board of Conciliators for dealing with all such questions, differences, or disputes as they arise, and may constitute the Board either on the nomination of the several Constituent States or otherwise, in such manner, upon such conditions, and for such term or terms as the Council may decide.

When any question, difference, or dispute, not of a justiciable character as defined in these Articles, is submitted to or taken into consideration by the International Council as aforesaid, the Council shall, with the least possible delay, take action, either (1) by referring the matter at issue to the Permanent Board of Conciliators, or (2) by appointing a Special Committee, whether exclusively of the Council or otherwise, to inquire into the matter and report, or (3) by appointing a Commission of Inquiry to investigate the matter and report, or (4) by itself taking the matter into consideration.

The Constituent States hereby agree and bind themselves, whether or not they are parties to any such matter at issue, to give all possible facilities to the International Council, to the Permanent Board of Conciliators, to any Committee or Commission of Inquiry appointed by either of them, and to any duly accredited officer of any of these bodies, for the successful discharge of their duties.

When any matter at issue is referred to the Board of Conciliation, or to a Special Committee, or to a Commission of Inquiry, such Board, Committee, or Commission

shall, if at any time during its proceedings it succeeds in bringing about an agreement between the parties upon the matter at issue, immediately report such agreement to the International Council; but, if no such agreement be reached, such Board, Committee, or Commission shall, so soon as it is finished its inquiries, and in any case within six months, make a report to the International Council, stating the facts of the case and making any recommendations for a decision that are deemed expedient.

When a report is made to the International Council by any such Board, Committee, or Commission that an agreement has been arrived at between the parties, the Council shall embody such agreement, with a recital of its terms, in a resolution of the Council.

When any other report is made to the Council by any such Board, Committee or Commission, or when the Council itself has taken the matter at issue into consideration, the Council shall, after taking all the facts into consideration, and within a period of three months, come to a decision on the subject, and shall embody such decision in a resolution of the Council. Such resolution shall, if necessary, be arrived at by voting, and shall be published, together with any report on the subject, in the Official Gazette.

A resolution of the Council embodying a decision settling a matter at issue between Constituent States shall be obligatory and binding on all the Constituent States, including all the parties to the matter at issue, if either it is passed unanimously by all the members of the Council present and voting; or (*query, add: it is passed with no other dissentient present and voting than the representatives of one only of the States which have been parties in the case*), or where the proposed enactment does

not affect the independent sovereignty or the territorial integrity, nor require any change in the internal laws of any State, and where such enactment shall have been assented to by a three-fourths majority of the votes given by the representatives present and voting (*query, add: and such majority includes all the eight Great Powers*).

The International Secretariat.

10. There shall be an International Secretariat, with an office permanently open for business, with such a staff as the International Council may from time to time determine.

It shall be the duty of the International Secretariat to make all necessary communications on behalf of the International Council to States or individuals; to place before the President to bring before the Council any matter of which it should have cognisance; to organize and conduct any inquiries or investigations ordered by the Council; to maintain an accurate record of the proceedings of the Council; to make authentic translations of the resolutions and enactments of the Council, the report of the proceedings, and other documents, and to communicate them officially to all the Constituent States; and to publish for sale an Official Gazette and such other works as the Council may from time to time direct.

Subject to any regulations that may be made by the International Council, the International Secretariat shall take charge of and be responsible for (*a*) the funds belonging to or in the custody of the International Council and the International High Court; (*b*) the collection of all receipts due to either of them; and (*c*) the making of all authorized payments.

THE INTERNATIONAL HIGH COURT.

11. The International High Court shall be a permanent judicial tribunal, consisting of fifteen Judges, to be appointed as hereinafter provided. Subject to these Articles it shall, by a majority of Judges sitting and voting, control its own proceedings, determine its sessions and place of meeting, settle its own procedure, and appoint its own officers. It may, if thought fit, elect one of its members to be President of the Court for such term and with such functions as it may decide. Its members shall receive an annual stipend of ———, whilst if a President is elected he shall receive an additional sum of ———. The Court shall hear and decide with absolute independence the issues brought before it in conformity with these Articles; and shall in each case pronounce, by a majority of votes, a single judgment of the Court as a whole, which shall be expressed in separate reasoned statements by each of the Judges sitting and acting in the case. The sessions of the Court shall be held, if so ordered, notwithstanding the existence of a vacancy or of vacancies among the Judges; and the proceedings of the Court shall be valid, and the decision of a majority of the Judges sitting and acting shall be of full force, notwithstanding the existence of any vacancy or vacancies or of the absence of any Judge or Judges.

(*Query, add: In any case at issue between Constituent States the Judge or Judges nominated by one or more of such States shall* (*unless all the litigant States otherwise agree*) *take no part in the case.*)

The Judges of the Court.

12. The Judges of the International High Court shall be appointed for a term of five (*query, seven*) years by

the International Council sitting as a whole, in accordance with the following scheme. Each of the Constituent States shall be formally invited to nominate one candidate, who need not necessarily be a citizen or a resident of the State by which he is nominated. The eight candidates severally nominated by the eight Great Powers shall thereupon be appointed. The remaining seven Judges shall be appointed after selection by exhaustive ballot from among the candidates nominated by the Constituent States other than the eight Great Powers. On the occurrence of a vacancy among the Judges nominated by the eight Great Powers, the State which had nominated the Judge whose seat has become vacant shall be invited to nominate his successor, and the candidate so nominated shall thereupon be appointed. On the occurrence of a vacancy among the other Judges, each of the Constituent States other than the eight Great Powers shall be invited to nominate a candidate to fill the vacancy; and the International Council sitting as a whole shall, by exhaustive ballot, choose from among the candidates so nominated the person to be appointed.

(*Query, add: but so that at no time shall more than one* (*or two*) *of the Judges be the nominees of any one State.*)

A Judge of the International High Court shall not be liable to any legal proceedings in any tribunal in any State, and shall not be subjected to any disciplinary action by any Government, in respect of anything said or done by him in his capacity as Judge; and shall not during his tenure of office be deprived of any part of the emoluments or privileges of his office. A Judge of the International High Court may be removed from office by a resolution of the International Council sitting as a whole, carried by a three-fourths majority.

The Court Open only to State Governments.

13. The International High Court shall deal only with justiciable questions, as defined in these Articles, at issue between the national Governments of independent Sovereign States, and shall not entertain any application from or on behalf of an individual person, or any group or organization of persons, or any company, or any subordinate administration, or any State not independent and sovereign. The International High Court may, if it thinks fit (*query, with the consent of all parties*), deal with a suit brought by a Constituent State against an independent Sovereign State which is not a Constituent State; or with a suit between two or more such States.

Justiciable Issues.

14. The justiciable questions with which the International High Court shall be competent to deal shall be exclusively those falling within one or other of the following classes, viz. :—

(*a*) Any question of fact which, if established, would be a cause of action within the competence of the Court;

(*b*) Any question as to the interpretation or application of any international treaty or agreement duly registered as provided in these Articles, or of International Law, or of any enactment of the International Council; together with any alleged breach or contravention thereof;

(*c*) Any question as to the responsibility or blame attaching to any independent Sovereign State for any of the acts, negligences, or defaults of its national or local Government officers, agents, or representatives, occasioning loss or damage to a State other than their own, whether to any of the citizens, companies, or sub-

ordinate administrations of such State, or to its national Government; and as to the reparation to be made, and the compensation to be paid, for such loss or damage;

(*d*) Any question as to the title, by agreement, prescription, or occupation, to the sovereignty of any place or district;

(*e*) Any question as to the demarcation of any part of any national boundary;

(*f*) Any question as to the reparation to be made, or the amount of compensation to be paid, in cases in which the principle of indemnity has been recognized or admitted by all the parties;

(*g*) Any question as to the recovery of contract debts claimed from the Government of an independent Sovereign State by the Government of another independent Sovereign State, as being due to any of its citizens, companies, or subordinate administrations, or to itself;

(*h*) Any question which may be submitted to the Court by express agreement between all the parties to the case.

(*Query, add:* (*i*) *Any question not falling within any of the classes above enumerated, which may be referred to the Court by the International Council by a majority of votes* (*or by a three-fourths majority, or by a three-fourths majority including all the eight Great Powers*).)

The question of whether or not an issue is justiciable within the meaning of these Articles shall be determined solely by the International High Court, which may determine such a question whether or not formal objection is taken by any of the litigants.

If any State, being a party to any action in the International High Court, objects that any point at issue is not a justiciable question as herein defined, the objection shall be considered by the Court; and the Court shall, whether or not the objecting State enters an appearance,

or argues the matter, pronounce upon the objection, and either set it aside or declare it well founded.

It shall be within the competence of the International High Court, with regard to any justiciable question in respect of which it may be invoked by one or more of the parties, summarily to enjoin any State, whether or not a party to the case, to refrain from taking any specified positive action or to discontinue any specified positive action already begun, or to cause to be discontinued any specified positive action begun by any person, company, or subordinate administration within or belonging to such State, which in the judgment of the Court is designed or intended, or may reasonably be expected to change the *status quo* with regard to the question at issue before the Court, or seriously to injure any of the parties to the case. Any such injunction of the International High Court shall be binding, and shall be enforceable, in the same way as a judgment of the Court, in the manner hereinafter described.

Immediate Publicity for all Treaties, existing and future.

15. No treaty or agreement between two or more independent Sovereign States shall be deemed to confer any right to invoke the International High Court, or shall be treated as valid, or be in any way recognized by the International Council or the International High Court, or shall be held to confer any rights, to impose any obligations, or to change the status or legal rights of any person, company, subordinate administration, district, or State, unless a duly authenticated copy of such Treaty or Agreement has been deposited by one or all of the States that are parties to it, in the Registry of the International High Court, within twelve months from

the date of these Articles, in accordance with any rules that may from time to time be made by the Court for this purpose; or in the case of a Treaty or Agreement hereafter made, within three months from the date of such Treaty or Agreement.

It shall be the duty of the officer in charge of the Registry immediately after the deposit to allow the duly accredited representative of any Constituent State to inspect and copy any Treaty or Agreement so deposited; and promptly to communicate a copy to the International Secretariat for publication in the Official Gazette.

Undertaking to submit all Justiciable Questions to the International High Court.

16. The Constituent States severally undertake and agree to submit to the International High Court for trial and judgment every question, difference, or dispute coming within the definition of a justiciable question as laid down by these Articles that may arise between themselves and any other independent Sovereign State or States; and at all times to abstain, in respect of such questions, from anything in the nature of an ultimatum; from any threat to take unfriendly or aggressive action of any kind with a view to redressing the alleged grievance or punishing the alleged wrong-doing; from any general mobilization; and from any violation of the territory of any other State or attack on the ships of such State or other military or naval operations, or other action leading or likely to lead to war.

(*Query: insert these two additional Articles.*)

Provision for Abrogation of Obsolete Treaties.

16A. *Provided that any Constituent State may at any time, whether before or after any question, dispute, or differ-*

ence has arisen on the subject with one or more other States, claim to have it declared that any Treaty or Agreement to which it is a party has become obsolete, wholly or in part, by reason of the subsequent execution of another Treaty or Agreement by which the earlier Treaty or Agreement has been substantially abrogated, or by reason of one or other independent Sovereign State concerned in such Treaty or Agreement having ceased to exist as such, or by reason of such a change of circumstances that the very object and purpose for which all the parties made the Treaty or Agreement can no longer be attained. When such a claim is made by either of the parties to a question, dispute, or difference, either party may, instead of submitting the question, dispute, or difference as a justiciable issue to the International High Court, in the alternative bring before the International Council sitting as a whole its claim to have the Treaty or Agreement declared to be obsolete, wholly or in part; and shall at the same time submit the question, dispute, or difference as a non-justiciable issue to the International Council sitting as a whole.

The Council shall promptly take into consideration any claim by a Constituent State to have any Treaty or Agreement declared obsolete, whether or not any question, dispute, or difference has arisen in connection with the subject, and shall take such steps as it may deem fit to ascertain the facts of the case, and may on any of the grounds aforesaid decide by resolution (query: passed by a three-fourths majority, or a three-fourths majority including all the eight Great Powers), that the said Treaty or Agreement is wholly or in part obsolete and ought to be abrogated, and in that case the said Treaty or Agreement shall be deemed to have been abrogated to such extent and from such date, and subject to such conditions as may be specified in the resolution of the Council.

If the Council passes such a resolution as aforesaid, and if any question, dispute, or difference, has been submitted to the Council in connection with the subject, the Council shall thereupon promptly deal with the question, dispute, or difference as a non-justiciable issue in conformity with these Articles.

Provision for Cases in which International Law is Vague, Uncertain, or Incomplete.

16B. *Provided also that when any question, dispute, or difference has arisen between two or more Constituent States, and such question, dispute, or difference may be deemed to be a justiciable issue as defined in these Articles, any of the parties in such issue may, before it has been submitted to the International High Court, take exception to its being so submitted, on the ground that the International Law applicable to such issue is so vague, or so uncertain, or so incomplete as to render the strict application thereof to the issue in question impracticable or inequitable. The Constituent State taking such exception shall thereupon immediately submit the question, dispute, or difference to the International Council instead of to the International High Court, and shall request the Council in the first place to consider and decide whether the exception is justly taken.*

If the Council decides by resolution passed by a three-fourths majority (Query, add: including all the eight Great Powers) that the exception is justly taken, no proceedings shall be taken on the issue in the International High Court. The Council shall thereupon promptly decide by resolution either to formulate new and additional principles of International Law applicable to the issue, which (Query, add: if enacted by a three-fourths majority, or by a three-fourths majority including all the eight Great Powers) shall be

referred to the International High Court with instructions to decide the question, dispute, or difference in accordance therewith; or the Council shall, in the alternative, promptly deal with the question, dispute, or difference as a non-justiciable issue in conformity with these Articles.

Enforcement of the Decrees of the Court.

17. When in any case upon which judgment is given by the International High Court, the Court finds that any of the parties to the case has, by act, negligence, or default, committed any breach of international obligation, whether arising by Treaty or Agreement, or by International Law, or by enactment of the International Council in accordance with these Articles, the Court may simply declare that one or other litigant State is in default, and leave such State voluntarily to make reparation; or the Court may, in the alternative, itself direct reparation to be made or compensation to be paid for such wrong, and may assess damages or compensation, and may, either by way of addition to damages or compensation, or as an alternative, impose a pecuniary fine upon the State declared in default, herein called the recalcitrant State; and may require compliance with its decree within a specified time under penalty of a pecuniary fine, and may prescribe the application of any such damages, compensation, or fine.

In the event of non-compliance with any decision or decree or injunction of the International High Court, or of non-payment of the damages, compensation, or fine within the time specified for such payment, the Court may decree execution, and may call upon the Constituent States, or upon some or any of them, to put in operation, after duly published notice, for such period and under

such conditions as may be arranged, any or all of the following sanctions, viz. :—

(*a*) To lay an embargo on any or all ships within the jurisdiction of such Constituent State or States registered as belonging to the recalcitrant State ;

(*b*) To prohibit any lending of capital or other moneys to the citizens, companies, or subordinate administrations of the recalcitrant State, or to its national Government ;

(*c*) To prohibit the issue or dealing in or quotation on the Stock Exchange or in the Press of any new loans, debentures, shares, notes or securities of any kind by any of the citizens, companies, or subordinate administrations of the recalcitrant State, or of its national Government ;

(*d*) To prohibit all postal, telegraphic, telephonic, and wireless communication with the recalcitrant State ;

(*e*) To prohibit the payment of any debts due to the citizens, companies, or subordinate administrations of the recalcitrant State, or to its national Government ; and, if thought fit, to direct that payment of such debts shall be made only to one or other of the Constituent Governments, which shall give a good and legally valid discharge for the same, and shall account for the net proceeds thereof to the International High Court ;

(*f*) To prohibit all imports, or certain specified imports, coming from the recalcitrant State, or originating within it ;

(*g*) To prohibit all exports, or certain specified exports, consigned directly to the recalcitrant State, or destined for it ;

(*h*) To prohibit all passenger traffic (other than the exit of foreigners), whether by ship, railway, canal, or road, to or from the recalcitrant State ;

(*i*) To prohibit the entrance into any port of the Con-

stituent States of any of the ships registered as belonging to the recalcitrant State, except so far as may be necessary for any of them to seek safety, in which case such ship or ships shall be interned;

(*j*) To declare and enforce a decree of complete non-intercourse with the recalcitrant State, including all the above-mentioned measures of partial non-intercourse;

(*k*) To levy a special export duty on all goods destined for the recalcitrant State, accounting for the net proceeds to the International High Court;

(*l*) To furnish a contingent of warships to maintain a combined blockade of one or more of the ports, or of the whole coastline of the recalcitrant State.

The International High Court shall arrange for all the expenses incurred in putting in force the above sanctions, including any compensation for loss hereby incurred by any citizens, companies, subordinate administrations, or national Governments of any of the Constituent States other than the recalcitrant State, to be raised by a levy on all the Constituent States in such proportions as may be decided by the International Council; and for the eventual recovery of the total sum by way of additional penalty from the recalcitrant State.

When on any decree or decision or injunction of the International High Court execution is ordered, or when any sanction or other measure ordered by the Court is directed to be put in operation against any Constituent State, it shall be an offence against the comity of nations for the State against which such decree, decision, injunction, or execution has been pronounced or ordered or against which any sanction or other measure is directed to be enforced, to declare war, or to take any naval or military action, or to violate the territory or attack the ships of any other State, or to commit any other act of

aggression against any or all of the States so acting under the order of the Court; and all the other Constituent States shall be bound, and do hereby pledge themselves, to make common cause with the State or States, so attacked, and to use naval and military force to protect such State or States, and to enforce the orders of the International High Court, by any warlike operations that may for the purpose be deemed necessary.

NOTES.

Note to Article 2.

The forty-four States represented at one or other of the Hague Conferences were (i.) the eight Great Powers—viz. Austria-Hungary, the British Empire, France, Germany, Italy, Japan, Russia, and the United States; (ii.) the following fifteen other States of Europe—viz. Belgium, Bulgaria, Denmark, Greece, Holland, Luxemburg, Montenegro, Norway, Portugal, Roumania, Serbia, Spain, Sweden, Switzerland, Turkey; (iii.) the following eighteen other States of America—viz. Argentina, Bolivia, Brazil, Chile, Colombia, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Mexico, Nicaragua, Panama, Paraguay, Peru, Salvador, Uruguay, Venezuela (these, together with the United States, and also Costa Rica and Honduras, constitute the twenty-one members of the Pan-American Union); (iv.) the following three other States—viz. China, Persia, Siam. Thus the only existing independent Sovereign States which could conceivably be brought in—and some of these may well be deemed not independent in respect of foreign relations—are the American States of Costa Rica and Honduras (which were invited to the 1907 Hague Conference, and actually appointed delegates, who did not attend); the African States of Morocco, Liberia, and Abyssinia; the Asiatic States of Afghanistan, Thibet, and Nepaul; and the European State of Albania (besides Andorra, Lichtenstein, Monaco, and San Marino, which have populations of less than 20,000).

It may be suggested that admission should be refused to any

State (i.) which does not, in fact, enter regularly into foreign relations with more than one other State; or (ii.) of which the foreign relations are under the control of another State; or (iii.) of which the population is less than 100,000. The adoption of these rules would probably exclude all but two or three of the above-mentioned outstanding States.

Note to Article 6.

The suggested complex organization of the International Council is required in order: (*a*) To prevent the Council being swamped, when it is dealing with matters not affecting Central and South America, by the representatives of the twenty independent Sovereign States of that part of the world; and (*b*) to maintain unimpaired the practical hegemony and the responsibility for preventing a serious war which have, in fact, devolved upon the eight Great Powers, whose adhesion to these Articles is essential to their full efficacy.

The Council for America would consist exclusively of the representatives of the twenty-one independent Sovereign States of the American Continent now associated in the Pan-American Union. Other States having dependencies on or near that Continent (viz. the British Empire in respect of the Canadian Dominion, Newfoundland, the British West Indian Islands, British Honduras, British Guiana, and the Falkland Islands; France in respect of St. Pierre and Miquelon, Guadeloupe, Martinique, and French Guiana; Holland in respect of Surinam and Curaçao; and Denmark in respect of Greenland, St. Croix, St. Thomas, and St. John) would be safeguarded by the power to require the transfer of any question to the Council of the eight Great Powers or to the Council sitting as a whole.

Note to Article 7.

The question of the relative voting power in the International Council of the forty or fifty independent Sovereign States is one of the greatest difficulty. At The Hague Conference the smaller States successfully maintained the right of all the States, even the smallest, to equality of voting power. On the other hand, the eight Great Powers, which are probably administering three-fourths of the total population of the world, disposing of seven-eighths of its governmental revenues, and controlling nine-tenths of its armed

forces, will certainly not submit to be outvoted by nine of the smallest States of America or Europe.

One suggested scale of relative voting power has the unique merit of having been actually agreed to at The Hague Conference in 1907 in the form of the relative participation of the Judges of the several States in the proposed International Prize Court. Devised for such a purpose, it somewhat overvalues certain States having exceptionally large maritime interests (such as Norway), and undervalues some having small maritime interests (such as Serbia). Other minor adjustments might now have to be made.

As agreed to by The Hague Conference, the relative position of the States works out into the following scale of votes:—

Austria-Hungary, the British Empire, France, Germany, Italy, Japan, Russia, the United States of America	20 votes	each.
Spain...	12 ,,	
The Netherlands	9 ,,	
Belgium, Denmark, Greece, Norway, Portugal, Sweden, China, Roumania, Turkey	6 ,,	each.
Argentina, Brazil, Chile, Mexico	4 ,,	,,
Switzerland, Bulgaria, Persia	3 ,,	,,
Colombia, Peru, Uruguay, Venezuela, Serbia, Siam	2 ,,	,,
The other Constituent States	1 vote	,,

(These may include Bolivia, Costa Rica, Cuba, Dominican Republic, Ecuador, Guatemala, Haiti, Honduras, Luxemburg, Montenegro, Nicaragua, Panama, Salvador, etc.)

As regards the Council for America, it may be urged that the existing Pan-American Union has equal voting. On the other hand, the United States is not likely to allow such a Council to become an effective legislature if, with four-sevenths of the population, it has only one-twenty-first of the voting power. The United States may, indeed, insist, in this Council, on an even larger relative voting Power than was conceded for the Prize Court.

A possible compromise between the two views is suggested in Article 7—the principle of equality prevailing in the Council of the eight Great Powers and the Council of the States other than the eight Great Powers, whilst in the Councils for Europe and America

and in the Council sitting as a whole the adoption of a scale of voting power is proposed.

It may, however, be deemed by the eight Great Powers a sufficient safeguard of their influence that any one of them can require any question to be transferred to the Council of the eight Great Powers, and that any decision of the other Councils is required to be submitted to this Council for ratification. It may be observed that, if this view is taken, and if the forty smaller States insist on equality of voting power in the Council sitting as a whole, the result would inevitably be detrimental to its influence as a legislature; and the tendency would be for it to be superseded, in all but unimportant and ceremonial matters, by the Council of the eight Great Powers.

Note to Articles 8, 8A, and 8B.

The legislative powers proposed for the International Council have to be limited, at the outset, because none of the independent Sovereign States of the world, large or small, would at present undertake, in advance, to be bound by the legislation enacted by such a Council. It would be a great gain to get any International Legislation, even if subject to ratification by each State. Even when every clause not ratified had been thrown out, the volume of such legislation—all the more authoritative because it had been specifically assented to—would steadily increase.

It is tentatively suggested that agreement might possibly be obtained to two carefully safeguarded extensions of legislative capacity. On matters of secondary importance all the Constituent States might conceivably agree to be bound by an overwhelming majority, and thus avoid the inconvenience that might be caused by a single State, perhaps out of sheer obstinacy or misapprehension, refusing to ratify.

Moreover, even when the subject matter is of more than secondary importance, the Constituent States might be willing so far to bind themselves to respect the repeated decision of an overwhelming majority as to allow that overwhelming majority, if it thought fit, to restrain, by means stopping short of war, any recalcitrant State from flouting such a repeated decision of the States of the world *by any positive act which changes the "status quo."*

It may be that the eight Great Powers would consent to either or

both these extensions of the legislative authority of the International Council if the overwhelming majority required had always to include all the eight Great Powers themselves.

Note to Article 9.

This provides, as regards non-justiciable issue, for (i.) a year's delay in all disputes, and for their coming before the International Council; (ii.) the utmost possible scope for investigation, consideration, and mediation, and the greatest possible opportunity for ultimate agreement between the parties; (iii.) where no voluntary agreement is come to, the obligatory settlement of the dispute by the International Council (*a*) if the Council is absolutely unanimous; (*b*) if it is unanimous except for one of the parties to the case; and (*c*) where the Council's decision affects neither the independence nor the territorial integrity, nor requires any change in the internal laws of any Constituent State, and if the enactment is carried by a three-fourths majority (or by such a majority including all the eight Great Powers). (The tentatively suggested Articles 16A and 16B should be considered along with this Article.)

Beyond that point, as regards intractable disputes of a non-justiciable character, there seems at present no chance of getting the States to agree in advance to be bound by any Supernational Authority.

Note to Article 15.

It may perhaps be left to the rules as to registration, to be made by the International High Court, to provide for securing that the Treaties or Agreements presented for registration by one of the parties thereto shall be duly authenticated copies and translations, and accepted as correct by the other party or parties, in such a way as to prevent any question subsequently arising as to the validity of the bilateral obligation purporting to be created.

Note to Article 16A.

It seems as if some such proviso as is here tentatively suggested were required, if all existing Treaties and Agreements are to be registered and made the basis for potential legal proceedings before the International High Court. It has not always been customary in Treaties specifically to repeal or abrogate the provisions of former treaties; and there is hardly ever any limit set to their

endurance. There is no saying what weird cases might not be founded on the various clauses of the Treaty of Westphalia (1648) or on those of the Treaty of Utrecht (1713), or on one or other of the tens of thousands of uncancelled documents, all solemnly signed and sealed, and professedly part of the "public law" of Europe, that might be fished up out of the *Chancelleries* of Europe for registration and potential enforcement in the International High Court. To enable disputes as to Treaties to be decided by a judicial tribunal is the very first object of all proposals of this nature. Yet a vast number of the existing Treaties are, in fact, wholly obsolete. Provision ought to be made somehow for deciding, otherwise than by their repudiation by one party, which of them must be declared to have become null and void; and it is suggested that this is a matter for decision, case by case, by the International Council representing the States of the world. An alternative course—which might, however, so choke the machinery as to prevent the Supernational Authority even getting under way—would be to provide for some impartial scrutiny and consideration of all Treaties and Agreements when they are presented for registration, in order to admit to registration only those deemed to be still in full force.

NOTE TO ARTICLE 16B.

It seems necessary to provide also for cases which, although apparently justiciable issues because there exists a certain amount of International Law dealing with the subject, could not equitably or properly be decided by the International High Court upon such law, owing to the vagueness, the uncertainty, or the incompleteness thereof. It is, therefore, tentatively suggested that it might be allowed to a Constituent State to take exception to a reference to the Court, and to submit the issue to the International Council on this ground, asking at the same time for a decision of the Council upon the exception. The Council could then, by an overwhelming majority, decide whether the exception is well taken. In that case the Council would then have to decide either to lay down new or additional principles of International Law applicable to the question, and remit the question with such new or additional principles to the High Court for trial as a justiciable issue. In the alternative, if it does not by such overwhelming majority decide to enact new International Law, the Council shall deal with the question as a non-justiciable issue,

VI

THE COMMUNITY OF NATIONS

Principles.

1. The healthy interest of nations can only be secured and developed to-day on a basis of international co-operation. For this purpose it is necessary to supplement the existing international machinery in various ways, and in particular by constituting and establishing on a definite basis the following bodies :—

(*a*) A Congress of national representatives sitting regularly to promote the common interest of nations.

(*b*) Courts of Arbitration and Justice to which points of difference concerning the interpretation of treaties and other matters of a juridical character in dispute between nations can be referred for decision.

(*c*) A Council of Conciliation to which cases of divergent interest between nations not of a juridical character can be referred for consideration and recommendation.

At the same time it ought to be possible for the Foreign Secretaries to meet one another at regular intervals and at critical junctures for a direct interchange of ideas instead of always through ambassadors.

2. Any Sovereign State desiring to be represented at the Congress, or to present a case to the Court or Council, should be entitled to do so.

3. All the Sovereign States should be encouraged to give undertakings—

(*a*) To submit all cases of dispute between them and other nations to a Court or to the Council, according to the nature of the issue.

(*b*) To abide by the decision of the Court or to be guided by the recommendation of the Council when delivered.

These undertakings may either take the form of separate treaties with other Sovereign States or of general conventions to which States could severally adhere.

4. The essential basis of the community of nations is consent and not the coercion of armed force.

VII

PRELIMINARY DRAFT OF A GENERAL TREATY FOR THE PACIFIC SETTLEMENT OF INTERNATIONAL DISPUTES, BY A DUTCH COMMITTEE

Introductory Provisions.

Art. 1.—There shall be established, with their seat at The Hague, an International Court of Arbitration and an International Council of Conciliation.

Art. 2.—In order to ensure the maintenance of Peace, the Contracting States undertake to submit all their differences to the decision of the International Court of Arbitration or of the International Council of Conciliation.

Art. 3.—The Contracting States undertake to respect, and conscientiously to carry out, the decisions and the decrees which in virtue of Articles 51 and 106 shall be binding on them.

CHAPTER I.

The International Court of Arbitration.

TITLE I.

Composition of the International Court of Arbitration.

Art. 4.—The Court shall be composed of judges and deputy-judges appointed by the Contracting States.

Each of the Contracting States shall appoint at least two and at the most four judges, and the same number of deputy-judges.

They shall be appointed for twelve years.

Appointments shall take effect from the date fixed by the State which has made them, not being earlier than the day on which they reach the Registry of the Court.

Appointments shall be made for the first time within six months after the ratification of this treaty.

ART. 5.—(Provisions respecting the qualifications of judges, supplementary appointments in case of decease, etc., inviolability, rank, incompatibility, etc.)

ART. 6.—The Court shall appoint its President and two Vice-Presidents.

They shall be appointed for four years.

Appointments are made by a majority of votes.

If the second scrutiny does not show an absolute majority, nominations shall be made on a simple majority.

If the votes are equally divided, the decision shall be made by lot.

Germany, the United States of America, Austria-Hungary, France, Great Britain, Italy, Japan, and Russia shall have each three votes. The other States shall have only one.

ART. 7.—The Presidential Bureau shall consist of the President and Vice-Presidents. They shall be domiciled at The Hague. Their decisions shall be arrived at by a majority of votes.

ART. 8.—The President, Vice-Presidents, and members of the Court shall receive annual salaries of fl. 24,000,

fl. 16,000, and fl. 2,000, Dutch currency, respectively,[1] payable every six months, the first instalment to be payable six months after the first sitting of the Court.

During a sitting of the Court, or of one of its Committees, the judges and the deputy-judges who are on the rota and the members of the Committee shall receive an allowance of 400 florins a day.

These allowances shall form part of the general expenses, and shall be paid by the Registry.

ART. 9.—Besides the above-mentioned payments no remuneration shall be allowed to the judges or deputy-judges, except:—

1. Travelling expenses, which shall be refunded to judges and deputy-judges by their own States, as provided by their municipal laws.
2. Expenses of residence and of keeping up of their official state incurred by the President and Vice-Presidents, which shall be borne by their own States.

ART. 10.—The sittings of the Court and of its Committees shall be held at The Hague, unless prevented by *vis major*, or unless in the interests of the inquiry, and with the consent of the parties, they shall appoint some other place for holding their sittings.

The Court and the Committees shall not hold sittings in the territory of a third Power without its consent.

ART. 11.—The Court shall draw up rules of procedure for itself and its Committees.

Votes shall be taken in conformity with the provisions of Article 6, paragraph 6.

[1] 1 florin = 1s. 8d.

ART. 12.—The International Bureau to be established under Article 111 shall serve as the Registry for the Court and its Committees.

Its General Secretary, or one of his substitutes, performs the duties of Registrar.

ART. 13.—The Presidential Bureau shall prepare a report every year, which the Registry shall send to the Contracting States, the judges, and the deputy-judges.

ART. 14.—The offices of judge and deputy-judge shall be compatible with that of judge or deputy-judge of the International Prize Court.

ART. 15.—The Court shall meet on the summons of the Netherlands Government for its first sitting not less than six months after the ratification of this treaty.

After the selection of President and Vice-Presidents the Court shall meet whenever it is summoned by the Presidential Bureau.

TITLE II.

Jurisdiction of the International Court of Arbitration.

ART. 16.—The Court shall have cognizance of all disputes of a justiciable character between the Contracting States.

The following are considered as such :—

All disputes concerning the interpretation of treaties and the application of rules and principles of international law, including the fixing of the amount of indemnities for the violation of treaties or of the rules and principles of international law.

The Court shall have cognizance also of disputes arising between Contracting States which by special treaty are subject to arbitration. These disputes shall be considered

to be of a justiciable character, even if they do not fall within the definition contained in the preceding paragraph of this Article.

ART. 17.—If the States in conflict have signed an arbitral agreement (*compromis*), the Court will decide the case according to the terms of the agreement lodged at the Registry.

If the States have not succeeded in agreeing upon an arbitral agreement (*compromis*), they may jointly request the Court to prepare a quasi-agreement (*quasi-compromis*) which shall take its place.

The Court shall prepare the quasi-agreement as soon as the joint demand has been lodged at the Registry.

Even if this request is made by only one of the parties, the Court shall prepare a quasi-agreement, provided the dispute is within its jurisdiction.

ART. 18.—The Court shall have jurisdiction to prepare a quasi-agreement at the request of one of the parties in the following cases:—

1. When a dispute is submitted to arbitration under the provisions of a treaty concluded or renewed after the coming into force of the present treaty:

(*a*) Unless the jurisdiction of the Court has been excluded; or

(*b*) Unless the opposite party declares that the dispute is not subject to arbitration, and that as regards this preliminary question the jurisdiction of the Court is excluded by the Arbitration Treaty.

2. In the case of a conflict concerning contractual debts due to the subjects of a State which demands payment of them from another State, if it has been agreed that this difference shall be settled by means of arbitration.

This clause, however, shall not apply if arbitration was accepted on condition that the quasi-agreement should be settled in some other way.

ART. 19.—The Court shall deal with a request to draw up a quasi-agreement as if it were a principal demand.

The provisions of Title III. (Procedure) shall be applicable.

ART. 20.—The Court shall decide the extent of its own jurisdiction when this is based upon:—

1. An arbitral agreement or quasi-agreement.
2. The joint request of the parties to prepare a quasi-agreement.
3. The provisions of Article 18 and the treaty clauses therein referred to for the preparation of a quasi-agreement on the request of one of the parties.

ART. 21.—A Committee of the Court shall deal with disputes submitted to the judgment of the Court by an arbitral agreement or a request to prepare a quasi-agreement.

This Committee shall be composed of:—

1. The judges (if only two), or the two senior judges, or, in default of judges, deputy-judges, appointed by each of the litigant States in the order of their appointment.
2. A President designated by the litigant States at the latest within a month after the deposit of the agreement or the aforesaid request at the Registry of the Court.

If the request comes from one party only, the Registrar shall send a copy as quickly as possible to the opposing party.

If the nomination of a President has not been made before the expiration of the fixed time-limit, he shall be chosen by the Presidential Bureau of the Court.

The President of the Committee shall be chosen from among the judges and deputy-judges of the Court. He cannot be chosen from among the judges and deputy-judges appointed by the parties to the dispute.

ART. 22.—If the Presidential Bureau is called upon to appoint the President of a Committee any of its members who have been appointed judges, parties in litigation shall abstain from taking part in the appointment.

Any member thus obliged to abstain shall be replaced by the senior judge (in the order of appointment) appointed by a neutral State.

Deputy-judges shall be called upon in accordance with a rota of States to be drawn up by the Court.

The voting with regard to this rota shall be governed by the provisions of Article 6, paragraph 6.

In case a deputy-judge is prevented from discharging his duties, his place shall be taken by the senior member (in order of appointment) of the next State according to the rota.

ART. 23.—If any member of a Committee (including the President) ceases to be a member of the Court, he shall continue nevertheless to fulfil the functions of a member of the Committee until judgment has been pronounced.

ART. 24.—If any member of a Committee (including the President) is prevented from fulfilling his duties, he shall be replaced by another member.

Article 21, paragraphs 2–4 and Article 22 shall apply *mutatis mutandis* to this substitution.

TITLE III.

Procedure.

ART. 25.—If an arbitral agreement is lodged at the Registry, the President of the Committee shall begin proceedings in the case as soon as possible after his appointment.

If a request to prepare a quasi-agreement is lodged at the Registry, the preceding paragraph of this Article shall apply.

ART. 26.—The Committee which has prepared a quasi-agreement shall adjudicate upon the case therein defined.

Proceedings will begin as soon as one of the parties has lodged a request to this effect at the Registry.

The Registrar shall forthwith send a copy of this request to the opposing party and to the President of the Committee.

ART. 27.—If the arbitral agreement has not decided the language to be used, this shall be decided by the Committee.

ART. 28.—The parties shall have the right to appoint special agents to represent them before the Committee who shall act as intermediaries between them and the Committee.

The parties shall also have the right of appointing advocates and counsel to defend their rights and interests before the Committee.

Members of the Court shall not exercise the functions of agents, counsel, or advocates except on behalf of the State which has appointed them as members of the Court.

ART. 29.—As a general rule, arbitral procedure comprises two distinct phases: pleadings and oral discussions.

The pleadings shall consist of statement of claim, statement of defence, and, if need be, reply with the communication by the respective agents to the members of the Committee and the opposite party, of cases, counter-cases, and, if necessary, replies; the parties annex thereto all papers and documents called for in the case. This communication shall be made either directly or through the Registry in the order and within the time fixed by the arbitral agreement.

The time fixed by the arbitral agreement may be extended by mutual agreement between the parties, or by the Committee when the latter considers it necessary for the purposes of reaching a just decision.

The discussions consist in the oral development before the Committee of the arguments of the parties.

ART. 30.—A certified copy of every document produced by one party must be communicated to the other party.

ART. 31.—Unless special circumstances arise, the Committee does not meet until the pleadings are closed.

ART. 32.—The discussions are under the control of the President.

They are only public if it be so decided by the Committee, with the assent of the parties.

They are recorded in minutes drawn up by the Secretaries appointed by the President. These minutes are signed by the President and by one of the Secretaries, and alone have an authentic character.

ART. 33.—After the close of the pleadings, the Committee is entitled to refuse discussion of all new papers and

all further documents which one of the parties may wish to submit to it without the consent of the other party.

ART. 34.—The Committee is free to take into consideration new papers or documents to which its attention may be drawn by the agents or counsel of the parties.

In this case the Committee has the right to require the production of these papers or documents, but is obliged to communicate them to the opposite party.

ART. 35.—The Committee can, besides, require from the agents of the parties the production of all papers, and can demand all necessary explanations.

In case of refusal, the Committee takes note of it.

ART. 36.—The agents and the counsel of the parties are authorized to present orally to the Committee all the arguments they may consider expedient in defence of their case.

ART. 37.—They are entitled to raise objections and points. The decisions of the Committee on these points are final and cannot form the subject of any subsequent discussion.

ART. 38.—The members of the Committee are entitled to put questions to the agents and counsel of the parties and to ask them for explanations on doubtful points.

Neither questions put nor the remarks made by members of the Committee in the course of the discussions can be regarded as an expression of the opinion of the Committee in general or of its members in particular.

ART. 39.—The Committee is entitled to issue rules of procedure for the conduct of the case, to decide the forms, order, and time in which each party must conclude its arguments, and to arrange all the formalities required for dealing with the evidence.

ART. 40.—The parties undertake to supply the Committee, as fully as they consider possible, with all the information required for deciding the case.

ART. 41.—For all notices which the Committee has to serve in the territory of a third Contracting Power, the Committee shall apply direct to the Government of that Power. The same rule applies in the case of steps being taken to procure evidence on the spot. The requests for this purpose are to be executed as far as the means at the disposal of the Power applied to allow under its municipal laws. They cannot be rejected unless the Power in question considers them calculated to impair its own sovereign rights or its safety.

The Committee shall equally always be entitled to act through the Power within whose territory it sits.

ART. 42.—When the agents and counsel of the parties have submitted all the explanations and evidence in support of their case, the President shall declare the discussion closed.

ART. 43.—The Committee considers its decisions in private and the proceedings remain secret. All questions are decided by a majority of the members of the Committee.

ART. 44.—The award must give the reasons on which it is based. It contains the names of the judges: it is signed by the President and Registrar.

ART. 45.—The decision is read out in open court, the agents and counsel of the parties being present or duly summoned to attend.

ART. 46.—The award, duly pronounced and notified to the agents of the parties, settles the dispute definitely and without appeal, subject to the provisions of Article 48.

ART. 47.—Any dispute arising between the parties as to the interpretation and execution of the award shall, in the absence of an agreement to the contrary, be submitted to the Committee which pronounced it.

ART. 48.—The parties can reserve in the arbitral agreement the right to demand the revision of an award. In addition, an appeal will always be allowed in so far as it refers to questions of competence.

The time-limit of the appeal shall be one month, unless the arbitral agreement has fixed some other period.

The appeal shall be lodged by sending a reasoned request addressed to the Registry.

ART. 48 [*sic*].—The Registrar shall at once forward a copy to the opposite party.

The appeal will be settled by a Committee formed in accordance with the rules laid down in Article 21, with the modifications that three members shall sit for each party, and that those who have acted as judges in the first instance shall not be eligible as members of the Appeal Committee.

Each party may appoint as many deputy-judges for every case as may be necessary to form the Appeal Committee.

If a party has not appointed the necessary number of deputy-judges within one month after the appeal has been lodged, the Presidential Bureau shall appoint from among the members of the Court the number of members necessary to complete the Committee of Appeal.

The provisions of Articles 25–45 apply *mutatis mutandis* to the procedure on appeal.

Art. 49.—The parties may reserve in the arbitral agreement the right to demand the revision of a sentence pronounced without appeal or on appeal.

A revision must be claimed by sending a reasoned request to the Registry. The Registrar shall at once forward a copy to the opposite party.

The Committee which has given the contested decision decides upon the claim for revision.

If there are vacancies, they will be filled up. Article 24 applies *mutatis mutandis.*

ART. 50.—The request for a revision must be based on some new fact which at the time when the case was closed was unknown to the Committee and to the party asking for revision, provided that this fact was such as might have had a decisive influence on the award.

The proceedings in a revision shall not begin until after an express decision of the Committee establishing the existence of the new fact which attributes to it the character required by the preceding Article, and which for these reasons declares the claim admissible.

ART. 51.—The award is not binding except on the parties to the dispute.

If the dispute concerns the interpretation of a treaty which also binds Powers other than the litigant parties, these shall inform them all of it in good time.

Such third Powers are entitled to intervene in the case.

The decision as to the interpretation of the treaty contained in the award shall be equally binding on all the intervening parties.

ART. 52.—The parties shall bear only their own expenses.

TITLE IV.

Arbitration by Summary Procedure.

ART. 53.—With a view to facilitating the working of arbitration in disputes admitting of a summary procedure, the Contracting Powers adopt the following rules, which shall be observed in the absence of other arrangements, and subject to the reservation that the provisions of the last preceding Title apply so far as may be.

ART. 54.—If the parties stipulate for the resort to summary procedure, the Committee shall be formed according to Article 21, except that the number of members who sit for each party shall be reduced to one.

ART. 55.—In the absence of any previous agreement, the Committee, as soon as it is formed, settles the time within which the two parties must submit their respective cases to it.

ART. 56.—Each party is represented before the Committee by an agent, who serves as intermediary between the Committee and the Government which appointed him.

ART. 57.—The proceedings are conducted exclusively in writing. Each party, however, has the right to ask that witnesses and experts shall be called.

The Committee has the right to demand, at its own instance, oral explanations from the agents of the two parties, as well as from the experts and witnesses whose appearance in Court it may consider useful.

TITLE V.

International Commissions of Inquiry.

ART. 58.—In disputes of an international nature involving neither honour nor vital interests and arising from a difference of opinion on points of fact, the Contracting Powers deem it expedient and desirable that the parties who have not been able to come to an agreement by means of diplomacy, should, so far as circumstances allow, institute an International Commission of Inquiry to facilitate the solution of these disputes by elucidating the facts by means of an impartial and conscientious investigation.

ART. 59.—International Commissions of Inquiry are constituted by special agreement between the parties in dispute.

The Inquiry Convention defines the facts to be examined; it determines the mode and time in which the Commission is to be formed, and the extent of the powers of the Commissioners.

It also determines, if necessary, where the Commission is to sit and whether it may remove to another place, the language the Commission shall use and the languages the use of which shall be authorized before it, as well as the date on which each party must deposit its statement of facts, and, generally speaking, all the conditions upon which the parties have agreed.

If the parties consider it necessary to appoint assessors, the Inquiry Convention shall determine the mode of their selection and the extent of their powers.

ART. 60.—If the Inquiry Convention has not determined where the Commission is to sit, it shall sit at The Hague.

The place of meeting, once fixed, cannot be altered without the assent of the parties.

If the Inquiry Convention has not determined what languages are to be employed, the question shall be decided by the Commission.

ART. 61.—Unless an undertaking be made to the contrary, Commissions of Inquiry shall be formed in the manner determined by Articles 21 and 22 of the present Convention.

ART. 62.—Should one of the Commissioners, or one of the Assessors (should there be any), either die or resign or be unable for any reason whatever to perform his functions, the same procedure is followed for filling the vacancy as was followed for appointing him.

ART. 63.—The parties are entitled to appoint special agents to attend the Commission of Inquiry whose duty it is to represent them and to act as intermediaries between them and the Commission.

They are further authorized to engage counsel or advocates, appointed by themselves to state their case and uphold their interests before the Commission.

ART. 64.—The International Bureau provided for in Article 111 acts as Registry for the Commissions which sit at The Hague, and shall place its offices and staff at the disposal the Contracting Powers for the use of the Commission of Inquiry.

ART. 65.—If the Commission meets elsewhere than at The Hague, it appoints a Secretary-General whose office serves as Registry.

It is the function of the Registry, under the control of the President, to make the necessary arrangements for the

sittings of the Commission, the preparation of the minutes, and, while the inquiry lasts, for the charge of the archives, which shall subsequently be transferred to the International Bureau at The Hague.

ART. 66.—In order to facilitate the constitution and working of Commissions of Inquiry, the Contracting Powers recommend the following rules, which shall be applicable to the inquiry procedure in so far as the parties do not adopt other rules.

ART. 67.—The Commission shall settle the details of procedure not covered by the special Inquiry Convention or the present Convention and shall arrange all the formalities required for dealing with the evidence.

ART. 68.—At the inquiry both parties must be heard.

At the dates fixed, each party communicates to the Commission and to the other party the statements of facts, if any, and in all cases the instruments, papers, and documents which it considers useful for ascertaining the truth, as well as the list of witnesses and experts whose evidence it wishes heard.

ART. 69.—The Commission is entitled, with the assent of the parties, to move temporarily to any place where it considers it may be useful to have recourse to inquiry on the spot or to send one or more of its members.

Permission must be obtained from the State on whose territory it is proposed to hold the inquiry.

ART. 70.—Every investigation and every examination of a locality must be made in the presence of the agents and counsel of the parties or after they have been duly summoned.

ART. 71.—The Commission is entitled to ask from either party such explanations and information as it considers necessary.

ART. 72.—The parties undertake to supply the Commission of Inquiry, as fully as they may think possible with all means and facilities necessary to enable it to become completely acquainted with, and accurately to understand the facts in question.

They undertake to make use of all the means at their disposal, under their municipal law, to insure the appearance of the witnesses or experts who are in their territory and have been summoned before the Commission.

If the witnesses or experts are unable to appear before the Commission, the parties shall arrange for their evidence to be taken before the competent authorities of their own country.

ART. 73.—For all notices to be served by the Commission in the territory of a third Contracting Power, the Commission shall apply direct to the Government of the said Power. The same rule applies in the case of steps being taken to procure evidence on the spot.

The requests for this purpose are to be executed so far as the means at the disposal of the Power applied to under its municipal laws allow.

They cannot be rejected unless the Power in question considers they are calculated to impair its sovereign rights or its safety.

The Commission shall equally always be entitled to act through the Power on whose territory it sits.

ART. 74.—The witnesses and experts are summoned on the request of the parties or by the Commission of its own

motion, and, in every case, through the Government in whose territory they are.

The witnesses are heard in succession and separately, in the presence of the agents and counsel, and in the order fixed by the Commission.

ART. 75.—The examination of witnesses is conducted by the President.

The members of the Commission may, however, put to each witness questions that they consider likely to elucidate or complete his evidence, or get information on any point concerning the witness within the limits necessary for arriving at the truth.

The agents and counsel of the parties may not interrupt the witness when he is making his statement, nor put any direct question to him, but they may ask the President to put such additional questions as they think expedient.

ART. 76.—The witness must give evidence without being allowed to read any written draft. He may, however, be permitted by the President to consult notes or documents, if the nature of the facts referred to necessitates their employment.

ART. 77.—A minute of the evidence of the witness is drawn up forthwith and read to the witness. The latter may make such alterations and additions as he thinks necessary, which will be recorded at the end of his statement.

When the whole of his statement has been read to the witness, he is asked to sign it.

ART. 78.—The agents are authorized in the course of or at the close of the inquiry to present in writing to the Commission and to the other party such statements, requisitions, or summaries of fact as they consider useful for ascertaining the truth.

ART. 79.—The Commission considers its decisions in private and the proceedings are secret.

All questions are decided by a majority of the Members of the Commission.

If a member declines to vote, the fact must be recorded in the minutes.

ART. 80.—The sittings of the Commission are not public, nor are the minutes and documents connected with the inquiry published, except in virtue of a decision of the Commission taken with the consent of the parties.

ART. 81.—After the parties have presented all the explanations and evidence, and the witnesses have been heard, the President declares the inquiry closed, and the Commission adjourns to deliberate and to draw up its report.

ART. 82.—The report is signed by all the members of the Commission. If one of the members refuses to sign, the fact is recorded, but the validity of the report is not affected.

ART. 83.—The report of the Commission is read at a public sitting, the agents and counsel of the parties being present or duly summoned.

A copy of the report is given to each party.

ART. 84.—The report of the Commission is limited to a statement of the facts, and has in no way the character of an award. It leaves to the parties full liberty as to the action to be taken on the report.

ART. 85.—Each party pays its own expenses, and an equal share of the expenses incurred by the Commission.

CHAPTER II.

The International Council of Conciliation.

TITLE I.

Composition of the International Council of Conciliation.

Art. 86.—The Council shall be composed of members and deputy-members appointed by the Contracting States.

Each of the Contracting States shall appoint at least two and at the most four members and the same number of deputy-members.

They shall be appointed for six years. The appointment shall take effect from the date fixed by the State which has made it, not being earlier than the date on which it reaches the Registry of the Council.

Appointments shall be made for the first time within six months after the ratification of this treaty.

Art. 87.—The following cannot be appointed:—

1. Diplomatists on active service.
2. Members of the International Court of Arbitration or members of the International Prize Court.

Appointments are made in each Contracting State by the head of the State from a list presented by the Legislative Body.

Art. 88.—(Provisions respecting substitutions in case of decease, etc., inviolability, rank, incompatibility, etc.)

Art. 89.—The Council shall appoint its President and two Vice-Presidents.

They shall be appointed for four years.

Article 6, paragraphs 3, 4, 5, and 6 are applicable.

ART. 90.—The Presidential Bureau is composed of the President and Vice-Presidents.

They shall be domiciled at The Hague.

Their decisions shall be arrived at by a majority of votes.

ART. 91.—The President and the Vice-Presidents shall receive annual remuneration of fl. 24,000 and fl. 16,000 respectively, Dutch currency, payable every six months, the first instalment to be payable [six months][1] after the first sitting of the Council.

These payments form part of the general expenses and shall be paid through the Registry.

ART. 92.—Besides the above-mentioned payments no remuneration shall be allowed to the members or deputy-members, except :—

1. Travelling expenses, which shall be refunded to members and deputy-members by their own States as provided by municipal laws.
2. The expenses of residence and of keeping up official state, which shall be borne by their own States.

ART. 93.—The sittings of the Council and of its Committees shall be held at The Hague, unless prevented by *vis major*, or unless in the interests of the inquiry, and with the consent of the parties, they shall appoint some other place.

ART. 94.—The Council shall draw up rules of procedure for itself and its Committees.

Votes shall be taken in conformity with the provisions of Article 6, paragraph 6.

[1] Not inserted, but see Article 8.

ART. 95.—The International Bureau to be established under Article 111 shall serve as the Registry for the Council and its Committees.

The General Secretary of the Bureau, or one of his substitutes performs the duties of Registrar.

ART. 96.—The Presidential Bureau shall prepare a report every year, which the Registrar shall send to the Contracting States, to the members, and to the deputy-members.

ART. 97.—The Council shall meet on the summons of the Netherlands Government for its first sitting not less than six months after the ratification of this treaty.

As soon as the President and Vice-Presidents have been appointed, the Council shall meet whenever it is summoned by the Presidential Bureau.

TITLE II.

Jurisdiction and Procedure of the International Council of Conciliation.

ART. 98.—The Council has jurisdiction to take cognizance of disputes between States :—

1. On the request of all the parties.
2. On the request of one of the parties, if the International Court of Arbitration has declared the case to be outside its jurisdiction ; if, according to the opinion of the parties, the dispute is not one subject to Arbitration ; or, if it does not admit of doubt that the case is outside the jurisdiction of the Court of Arbitration.

The Registrar shall without delay send a copy of the request to the opposing party.

ART. 99.—The requests prescribed in the previous Article shall be submitted to the judgment of a Committee of the Council.

The Committee shall be composed of :—

1. Of the two members or the two senior members or in default of members, of deputy-members (in order of appointment) selected by each of the States in litigation.

   During the month after the claim has been lodged at the Registry, the States have the right to select a larger number of members or different members, or deputy-members of the Council as members of the Committee, provided always that the number of those appointed shall be the same for all the States.

2. Of a President, with consultative voice, selected by the States at latest within a month after the claim is lodged at the Registry.

   If the selection has not taken place within this time, the President of the Commission is appointed by the Presidential Bureau of the Council.

   The President of the Committee must be appointed from among the members or deputy-members of the Council.

   The members or deputy-members appointed by each of the parties are not eligible.

ART. 100.—If the Presidential Committee is called upon to appoint the President of a Committee, the members of the Presidential Committee whom the parties in litigation have appointed as members of the International Council of Conciliation shall abstain from voting.

Each member of the Presidential Committee who has to abstain or who is prevented from attending, shall be

replaced by the senior member (in order of appointment) of those whom a third State has appointed as members of the Council.

Such substitutes shall be summoned according to the order of the States set out in a list prepared by the Council.

The vote relating to the list takes place in accordance with the provisions of Article 6, paragraph 6.

If a substitute is prevented from attending, his place shall be taken by the senior member (in order of appointment) among those appointed by the State which comes next on the list.

ART. 101.—If a member of the Committee, including the President, ceases to be a member of the Council after the examination into the dispute has begun, he shall continue to fulfil the duties of a member until the time when the decision is arrived at.

ART. 102.—If a member of the Committee, including the President, is prevented from fulfilling his duties, he shall be replaced by another member. In this case Articles 99 and 100 shall apply *mutatis mutandis*.

ART. 103.—When the President is chosen, the examination shall be notified as soon as possible.

The Committee shall question the representatives of the parties in each other's presence.

The parties and third Powers—if they consent—shall furnish all the information that they are able to produce.

The examination shall take place according to the rules of procedure.

It shall be public, if the Committee, with the consent of the parties, so prescribe.

ART. 104.—Deliberation shall always be in secret.
The Committee decides by decree.
Members have only one vote.

ART. 105.—Decisions are adopted by the majority of votes.

The majority must include at least one vote of a member of each party.

If the votes are equally divided, the President has the casting vote, except where the request has not come from all parties or when the joint request limits the decision to the members of the Committee.

A member of a party is a member of the Committee who has been appointed member or deputy-member of that Council by that party.

ART. 106.—Decrees arrived at under Articles 104 and 105 shall be binding upon the parties.

Decrees shall be communicated to the parties and made public.

If a decree has not been pronounced, the arguments put forth on both sides may be made public if it be so decided by a majority of votes and with the assent of the parties.

ART. 107.—The Council shall be entitled, at its own instance, to give an opinion on a dispute in the following cases :—

1. If a request covered by Article 98 is not settled by a decision of the Committee.
2. If a dispute, whether or not of a justiciable nature, has arisen between Contracting States and has not been submitted either to the Court or to the Council,

3. If there is reason to fear that a dispute, whether or not of a justiciable nature, may arise between Contracting States.

ART. 108.—The President shall summon the Council within a month at the joint request of members representing at least five States.

ART. 109.—The Council shall consider and decide at a full sitting upon the opinion to be given, unless it hands over the decision to a Committee.

Deliberations shall take place in secret, unless the Council or Committee decide otherwise.

In the full sitting, each Contracting State has one vote, except that Germany, Austria-Hungary, Great Britain, France, Italy, Russia, Japan, and the United States of America have each three votes.

In the sittings of a Committee the vote shall be taken according to rules fixed by the Council.

The Council and Committees shall deliberate and decide according to the regulations fixed by the rules of procedure.

ART. 110.—The opinion arrived at by the majority of votes shall be notified to the Contracting States concerned.

FINAL AND INTERIM PROVISIONS.

ART. 111.—An International Bureau shall be established at The Hague to serve as Registry to the International Court of Arbitration and the International Council of Conciliation. It shall be the medium of communications

relative to their meetings, and it shall have the care of the archives and the carrying out of all administrative business.

The Contracting Powers undertake to communicate to the Bureau, as soon as possible, a certified copy of every agreement for arbitration concerning them decided by special jurisdiction.

They also undertake to communicate to the Bureau all laws, regulations, and documents, relating to the ultimate carrying out of the decisions given by the Court.

ART. 112.—The direction and control of the International Bureau shall be in the hands of the permanent administrative Council, composed of the diplomatic representatives of the Contracting Powers accredited at The Hague and of the Dutch Minister of Foreign Affairs, who shall fill the post of President.

The Council shall settle its rules of procedure as well as all other necessary regulations. It shall decide all administrative questions which may arise concerning the functions of the Court of Arbitration and the Council of Conciliation.

It shall have full powers as regards the appointment, suspension, or dismissal of officers and employees in the Bureau.

It shall fix the salary and fees and control the general expenses.

The presence of nine members in meetings duly summoned shall suffice to make the deliberations of the Council valid.

Decisions shall be adopted by the majority of votes.

The Council shall communicate without delay to the Contracting Powers the regulations it has adopted. It shall present to them each year a report on the work

of the Court of Arbitration, the Council of Conciliation, the Administrative services, and the expenses.

The report shall also contain a summary of the chief contents of the documents communicated to the Bureau by the Powers in virtue of Article 3, paragraphs 2 and 3.

ART. 113.—The expenses of the Bureau shall be borne by the Contracting Powers in the proportion agreed upon for the International Bureau of the Universal Postal Union.

The expenses incurred by Adhering Powers shall be reckoned from the day from which their adhesion takes effect.

ART. 114.—The present Convention duly ratified shall replace in the relations between the Contracting Powers the Convention for the Pacific Settlement of International Disputes of October 18th, 1907.

Powers which have, before the present Convention shall come into force, entered into special arbitration treaties with each other, or which have before that date agreed to an arbitration clause, shall be deemed to revoke all provisions contrary to the present Convention which may be found in any such treaty or clause and to confer jurisdiction upon the International Court of Arbitration in all disputes covered by such a treaty or by such a clause, except for the application of Articles 17 and 18.

The presumption of the preceding paragraph shall not apply if the parties, or one of the parties, declare it contrary to its intentions within three months after ratifications of the present Convention are deposited.

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